Court of Appeal No.

EXEMPT FROM FILING FEES PURSUANT TO GOV. CODE § 6103

IN THE

CALIFORNIA COURT OF APPEAL

THIRD APPELLATE DISTRICT

COUNTY OF PLACER,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER,

Plaintiff,

NOAH FREDERITO and PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION,

Real Parties in Interest

APPEAL FROM MAY 17, 2022 ORDER OVERRULING DEMURRER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER, DEPT. 42, THE HONORABLE MICHAEL W. JONES, PRESIDING (TEL. 916-408-6000)
SUPERIOR COURT CASE NO.: S-CV-0047770

APPENDIX TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF [VOLUME 3 OF 4, PP. PA 476 - PA 640]

Michael D. Youril, Bar No. 285591
Lars T. Reed, Bar No. 318807
LIEBERT CASSIDY WHITMORE
400 Capitol Mall, Suite 1260
Sacramento, CA 95814
Telephone: 916-584-7000
Facsimile: 916-584-7083

Attorneys for Petitioner
COUNTY OF PLACER

INDEX OF EXHIBITS

Exhibit 11

DAVID E. MASTAGNI, ESQ. (SBN 204244)
davidm@mastagni.com
TAYLOR DAVIES-MAHAFFEY, ESQ. (SBN 327673)
tdavies-mahaffey@mastagni.com
MASTAGNI HOLSTEDT
A Professional Corporation
1912 "I" Street
Sacramento, California 95811
Telephone: (916) 446-4692
Facsimile: (916) 447-4614

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO, Petitioners, vs. COUNTY OF PLACER, Respondent.	Case No.: S-CV-0047770 **PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Petitioners Placer County Deputy Sheriffs' Association ("DSA") and Noah Frederito (collectively, "Petitioners") respectfully submit the following Opposition to Respondent the County of Placer ("Respondent" or "County") Motion to Strike on the grounds that the County did not adequately meet and confer with Petitioners prior to filing the motion and that the motion identifies no meritorious grounds on which to strike the disputed paragraphs.

I. INTRODUCTION

On September 28, 2021, the Placer County Board of Supervisors ("Board") unilaterally repealed a 44-year-old wage initiative known as "Measure F." The Board took this action without submitting the repeal to the voters in violation of the California Constitution and Elections Code. Based on this unlawful repeal, the Board then imposed on the DSA wage increases that violated Measure F. In response to the County's unlawful conduct, Petitioners filed a Petition for Writ of Mandate and Complaint for Declaratory Relief on December 21, 2021. On January 21, 2022, Petitioners filed an Amended Petition ("Petition"). The County has filed this motion ("Motion") seeking to strike paragraphs 10-63 of the Amended Petition, claiming that those allegations are irrelevant. As set forth more fully below, the County's claims are without merit.

First, the County did not comply with the statute governing motions to strike. The County did not properly meet and confer with Petitioners over this motion, and the County failed to identify, with specificity, which allegations should be stricken. Second, and more importantly, the 54 paragraphs the County seeks to strike are relevant to the proceeding. Finally, the Petition complies with all applicable standards of pleading, rendering the County's attempt to strike any portion of the Petition improper.

II. LEGAL STANDARD

Pursuant to California Code of Civil Procedure section 436 the Court, in its discretion and under terms it deems proper, is authorized to strike out any "irrelevant, false, or improper matter inserted in any pleading." The Court may also strike out all or any part of a pleading "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (*Ibid.*)

An immaterial or "irrelevant" allegation is one that is not essential to the statement of a claim or defense, or an allegation that is neither pertinent to nor supported by an otherwise sufficient

claim or defense, or a demand for judgment requesting relief not supported by the allegations in the pleading. (Code Civ. Proc. § 431.10(b).) Allegations in pleadings are to be "liberally construed." (Code Civ. Proc. § 452.) When reviewing pleadings, courts draw all reasonable inferences in favor of the allegations therein. (*Beck v. County of San Mateo* (1984) 154 Cal.App.3d 374, 379.) Moreover, courts "read allegations of a pleading subject to a motion to strike **as a whole, all parts in their context**, and assume their truth. (*Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1145, 1157 [citing *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255] [emphasis added].)

III. ARGUMENT

The County seeks to strike the vast majority of the Petition (54 of 93 relevant paragraphs – over half of the Petition) on the grounds that the County has unilaterally deemed the paragraphs irrelevant. (See Motion, p. 6.) The County's Motion cannot be granted. The County failed to adequately meet and confer with Petitioners and also failed to identify the grounds for objecting to each allegation. Instead, the County discussed the 70 allegations collectively and its grounds for objections in broad strokes. Accordingly, the County failed to comply with the controlling statute. Further, the material the County seeks to strike is directly relevant to the causes of action set forth in the Petition, and thus cannot be properly stricken. The Petition is adequately and properly pleaded, and the disputed paragraphs should not be stricken. Instead, the disputed material should be liberally construed and presumed true. Thus, the County's Motion to Strike should be denied in its entirety.

A. The County's Motion to Strike Failed to Comport with the Controlling Statute.

Prior to filing a motion to strike, the moving party is required to meet and confer with the party who filed the pleading to determine if an agreement can be reached. (Code Civ. Proc. § 435.5(a).) If an amended pleading is filed, the parties must meet and confer again regarding the amended pleading. (*Ibid.*) As part of the meet and confer process, the moving party must identify "all of the specific allegations that it believes are subject to being stricken and identify with legal support the basis of the deficiencies." (Code Civ. Proc. § 435.5(a)(1) [Emphasis added].) The parties shall meet in good faith. (Code Civ. Proc. § 435.5(a)(2).) Such a good faith attempt involves

more than merely trying to convince the other side "of the errors of their ways." Rather, it requires "a serious effort at negotiation and informal resolution", which includes talking the matter over, comparing viewpoints, consultation, and deliberation. (*Townsend v. Super. Ct.* (1998) 61 Cal.App.4th 1431, 1435-39.)

On January 7, 2022, Respondent's counsel, Michael Youril, contacted Petitioners' counsel, David E. Mastagni, via an email regarding his intention to demur to the Petition for Writ of Mandate and to move to strike paragraphs 10-80 of the Petition for Writ of Mandate. (Declaration of David E. Mastagni ISO Opposition to Motion to Strike ("Mastagni Dec.".) ¶ 4.) The only basis for the motion to strike stated in the email was, "[m]ost of the above is irrelevant to the pending matter and primarily involves matters that are still pending before the PERB Board." (Mastagni Dec. ¶ 4, Exh. 1.) On January 12, 2022 at 9:30 am, counsel for Petitioners, David E. Mastagni and Taylor Davies-Mahaffey, met and conferred telephonically with counsel for Respondent Michael Youril and Lars Reed, regarding the County's intent to file a demurrer and a motion to strike. During the very brief conversation, Respondent's counsel restated they intended to move to strike paragraphs 1-80 from the Petition. (Mastagni Dec. ¶ 5.) Initially, Mr. Youril asserted the paragraphs at issue were relevant to Petitioner's PERB Charge alleging bad faith bargaining and other unfair labor practices. Mr. Mastagni explained that while the actions before PERB involved some overlapping factual circumstances, the legal cause of action and relief were distinct. Petitioners' counsel further informed Mr. Youril that the relevance of the 70 paragraphs identified varied by subject matter and relevance to this action. Mr. Mastagni offered examples, pointing out that some paragraphs dealt with the parties bargaining over measure F and overall compensation, other dealt with subsequent voter initiatives to retain Measure F, other dealt with the County's inconsistent interpretations of Measure F and misrepresentations. Mr. Mastagni also explained that the allegations had multiple and varied relevance, including the legal theories and the remedies. Regarding remedies, Petitioners explained that impacts of the County's actions and their arbitrariness are relevant to fee liability. The County suggested that allegations related to attorney fee liability did not need to be included in the Petition. (*Ibid.*)

///

During this phone call, Petitioners' counsel repeatedly invited the County to discuss each allegation at issue so the parties could properly confer over its relevance and advised that it was not feasible to adequately meet and confer over 70 paragraphs of the Petition collectively. (Mastagni Dec. ¶ 6.) Mr. Mastagni also advised that Petitioners were willing to amend the Petition if the County could articulate individualized grounds for each allegation they desired to strike. Mr. Mastagni advised that insisting on conferring over all 70 paragraphs collectively would waste judicial resources and spike the litigation costs as the individualized consideration would end up eventually being briefed. Respondent's counsel consistently declined to discuss the relevance of the individual paragraphs. As an alternative, Petitioners' counsel also suggested Respondent limit the number of paragraphs it sought to strike to make the meet and confer discussions more fruitful. Respondent's counsel declined those offers as well. (*Ibid.*)

On January 13, 2022, Mr. Mastagni sent a letter to Mr. Youril, memorializing the attempt to meet and confer and once again offered to discuss each paragraph the County intended to move to strike. (Mastagni Dec. ¶ 7, Exhs. 2-3.) Mr. Mastagni further reiterated that were Respondent to reduce the number of paragraphs it sought to strike, the meet and confer discussions would be more efficient. In response, the County again declined to meet and confer in good faith regarding the disputed paragraphs. (*Ibid.*)

In the spirit of cooperation and the hope of avoiding the expenses associated with a motion to strike, Petitioners filed an Amended Petition on January 21, 2022, unilaterally removing some of the disputed material. (Mastagni Dec. ¶ 8.) None of the amendments were agreed upon during the meet and confer call. (*Ibid.*) In a brief conversation on January 28, 2022, the County's counsel again declined to discuss any allegations with particularity. (Mastagni Dec. ¶ 9.) Instead, Mr. Youril summarily advised that his position regarding the motion to strike was unchanged and there was nothing further to discuss. Instead of meeting and conferring in good faith regarding the objections to each disputed allegation, the County filed its Motion to Strike and Demurrer on February 2, 2022, seeking to strike 54 paragraphs from the Amended Petition. Thus, the County failed to meet and confer with Petitioner in good faith following the filing of the Amended Petition, in contravention of the controlling statute. (See Code Civ. Proc. § 435.5(a)(2).)

By failing to meet and confer in good faith, the County's Motion to Strike is improper. On this basis alone, the County's Motion should not be considered or should be denied in its entirety if any allegations are proper.

B. The Material the County Seeks to Strike is Relevant.

"[A] matter which is essential to cause of action should not be stricken . . . and it is error to do so. (*Clements v. T. R. Bechtel Co.* (1954) 43 Cal.2d 227, 242 [citing cases] [internal citations omitted].) "'Where a motion to strike is so broad as to include relevant matter, the motion should be denied in its entirety.'" (*Triodyne, supra,* 240 Cal.App.2d at 542; [see also *Allerton v. King* (1929) 96 Cal.App. 230, 234].) Material essential to laying the foundation of a claim is *per se* relevant. (See *California Farm & Fruit Co. v. Schiappa-Pietra* (1907) 151 Cal. 732, 745 [where facts alleged lay the foundation for any part of a claim for relief properly sought, it is error to strike those facts even if they are not absolutely necessary].) The relevance of foundational facts is even more apparent where, as here, a matter is particularly complicated. (*Id.* at 741).

A "relevant" fact is one which has "***any*** tendency to prove or disprove ***any*** disputed fact that is of consequence to the determination of the action." (Evid. Code § 210 [emphasis added].) A fact is relevant if it tends to prove any position taken by Petitioners in regard to the dispute at issue, and/or if it tends to disprove any position taken by the County in regard to the dispute at issue. The foundational facts the County seeks to strike are instrumental to Petitioners' case in both regards. Thus, the disputed paragraphs in the Petition are plainly relevant and not subject to strike.

1. The Disputed Material is Relevant for Attorney's Fees and Damages.

First, each and every allegation establishing the foundational facts of this dispute are relevant to Petitioners' entitlement to attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious].) The Petition sets forth facts regarding the County's continuously changing position on the Measure F formula during pending negotiations to demonstrate that the repeal was not done in good faith. Furthermore, allegations of misrepresentations to the public, arbitrary and capricious behavior, improper motivations, and attempts to overturn the express will of the electorate are relevant to attorney's fees and damages. (See Code Civ. Proc. § 1021.5[attorneys' fees granted for the enforcement of

an important right affecting the public interest].) Facts pleaded regarding appropriate damages are relevant and should never be stricken from complaints.[1] (See *Johnson v. Central Aviation Corp.* (1951) 103 Cal.App.2d 102, 105-106 [improper to strike as irrelevant complaint allegations related to damages].)

2. The Disputed Material Relates to the Crux of Petitioner's Argument.

The Petition sets forth three causes of action, alleging that the County violated Elections Code section 9125, the California Constitution, and the Placer County Code by unilaterally repealing Measure F (Placer County Code section 3.12.040) and then imposing deputy salaries that violated the ordinance. Petitioners contend that Measure F was properly enacted by initiative in 1976. However, even if the 1976 initiative vote was invalid (as the County claims it was), the Placer County Board of Supervisors adopted the Measure F formula over the years, including multiple resolutions affirming section 3.12.040, ***after*** the incorporation of the Charter. Thus, regardless of when Measure F/section 3.12.040 became effective, the popular votes in 2002 and 2006, in which the voters of Placer County twice refused to repeal Measure F, sufficiently implicate Election Code 9125 and the Constitution's protection of the people's initiative power. (See Elec. Code § 9125 ["No ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance."].)

During the 2002 and 2006 elections, the County and the Placer County Board of Supervisors created and distributed election materials, on which the Placer County electorate relied, that a "no" vote retained the Measure F formula and that a "yes" vote repealed the Measure F formula. (See Exhibits "A" and "C" to the Amended Petition.) Any ambiguity as to the import of the "no" vote must be resolved in favor of the will of the electorate to affirm section 3.12.040 through the initiative process. (See *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 946 [holding "Our answer is rooted firmly in the long-standing and consistent line of cases emphasizing courts' obligation to protect and liberally construe the initiative power and to narrowly construe

[1] Although County maintains that fee liability is not relevant unless Petitioners prevail, that argument is not a basis to strike any of the material allegations related to damages. Amending remedies into the Petition at a later stage simply wastes the time of both parties as well as scarce judicial resources.

provisions that would burden or limit its exercise."] [internal citations omitted].) Thus, regardless of the efficacy of the 1976 initiative, the failed attempt to repeal Section 3.12.040 in 2002, and the subsequent failed attempt to repeal section 3.12.040 in 2006, independently probhits Section 3.12.040's repeal without a vote of the people. (See Elec. Code § 9125.) Alternatively, petitioners argue that the California Constitution prevents the County from nullifying the electorate's lawful vote on these initiatives. (See Respondents' Opposition to Demurrer at p. 19.) In moving to strike the disputed paragraphs of the Petition, the County seeks to prevent the Court from assessing the legal import of the 2002 and 2006 initiative measures and the broad, inherent Constitutional protections against government action that would nullify the will of the electorate.

Plainly, much of material the County seeks to strike from the Petition are allegations that represent the core of Petitioners' causes of action and go to rebut the County's claims. Each and every one of the disputed allegations supporting Petitioners' position regarding the foregoing or calling into question the County's position regarding the foregoing are manifestly relevant to the instant matter and thus cannot be properly stricken. (Evid. Code § 210.)

3. Each One of the Disputed Paragraphs is Relevant.

a. Paragraphs 12, 14, 15.

The County's Motion states the foregoing paragraphs "contain allegations about prior (failed) ballot initiatives attempting to repeal Placer County Code section 3.12.040." (Motion at p. 7.) The relevance of these paragraphs is discussed at length above. The allegations contained in these paragraphs are relevant to the County's claim that Measure F was eliminated by enactment of the Charter. Were that the case, the County would have no need to seek repeal of Measure F in either 2002 or 2006.

Moreover, the County's February 2, 2022 requests for judicial notice demonstrates that the history of Measure F, set forth by the Petition, spanning from 1976 to the present, is inherently relevant to the dispute. The requests for judicial notice are themselves the County's tacit admission that the facts set forth in the Petition are relevant, particularly as the allegations claim the will of the voters as expressed at the ballot box is material to the instant legal dispute. Relevant matters which are properly the subject of judicial notice are appropriate in complaints, and are treated as

well-pleaded facts. (See *City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.* (2003) 109 Cal.App.4th 1668, 1678.) As noted above, these facts are also relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

b. Paragraphs 10, 11, 13, 30, and 38-41.

The County's Motion states the foregoing paragraphs "contain allegations regarding prior representations and public statements allegedly made by County representatives regarding the validity and legal status of Measure F." (Motion, p. 7.) The statements of County public officials and County representatives are the official legal pronouncements of the County, specifically relied upon by the voters. (See Evid. Code § 664 [It is presumed that an official duty has been regularly performed]; see also *Walker v. Los Angeles Cnty.* (1961) 55 Cal.2d 626, 636 [en banc] [the acts of the local legislature carry a rebuttable presumption that official duty has been performed].) Thus, the pronouncements are directly relevant evidence of voter intent when voting for or against Measure F. For example, an article written by the former Placer County CEO shows that at the time of the enactment of the Charter, Measure F was construed as valid and compatible with the Charter, and remained in effect for decades. (See Exhibit "B" to the Amended Petition.)

Thus, the allegations contained in these paragraphs are relevant because they show the County's position upon which the electorate relied when voting on initiative measures. They are also relevant to show that between 1980 and 2003 county officials have construed 3.12.040 as compatible with the Charter. They further illustrate positions upon which Petitioners relied during collective bargaining and negotiations. The paragraphs are relevant to credibility determinations, as they demonstrate the County's position over time, and the County's representations to Petitioners and the public. As noted above, these facts are also relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

///

c. Paragraph 16.

The County's Motion states the foregoing paragraph "alleges the DSA 'accepted the judgment of the voters' with respect to its failed attempt to repeal section 3.12.040 in 2006." (Motion at p. 7.) The relevance of this paragraph is discussed at length, above. This paragraph sets forth DSA's position as it relates to collective bargaining regarding Measure F and section 3.12.040. It is of note, and relevant to the instant dispute, that the County only construed Measure F as in conflict with the Charter when the DSA would not submit to the County's demands that the DSA subvert the will of Placer County voters. The gravamen of the Petition is that the County breached a ministerial duty by failing to abide by the Elections Code and the will of the voters. The relevance of these paragraphs is further demonstrated by the County's own requests for judicial notice of past election results. As noted above, these facts are also relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

d. Paragraphs 17-19 and 21.

The County's Motion states the foregoing paragraphs "contain allegations regarding the parties' past practice of enacting salary increases consistent with Measure F." (Motion at p. 8.) The relevance of these paragraphs is discussed at length above. These paragraphs demonstrate that for over 40 years, the parties interpreted Measure F in a consistent manner and shows a course of conduct of both parties regarding their understanding of Measure F. These paragraphs are directly relevant to credibility determinations, including the position of the parties in collective bargaining over time. These facts demonstrate the County's position on which Petitioners relied during collective bargaining and negotiations. As noted above, these facts are also relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

///

///

e. Paragraph 20.

The County's Motion states the foregoing paragraph "contains allegations regarding a prior amendment to County Code section 3.12.040 that did not affect the salary-setting formula for deputy sheriffs." (Motion at p. 8.) Were section 3.12.040 negated by the Charter, the County would have no need to amend the code section. Further, this paragraph is relevant to show the County's position on the legality of Measure F over time. The paragraph is also relevant in making credibility determinations. These facts are relevant to the question of attorney's fees and damages.

f. Paragraphs 22 and 23.

The County's Motion states the foregoing paragraphs "consist of unsupported speculation regarding the County's motives for repealing Section 3.12.040 and the County's legal position regarding its authority to do so." (Motion at pp. 8-9.) Allegations made upon information and belief are decidedly appropriate at the complaint stage. A "'plaintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true.'" (*Doe v. Cty. Of Los Angeles* (2007) 42 Cal.4th 531, 570 [quoting *Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792].) Indeed, one of the purposes of litigation is to discover evidence that supports pleading allegations. Further, the paragraphs are relevant because they go directly to the subject matter of the dispute; whether the County knew it did not have the legal authority to repeal Measure F unilaterally. The relevance of these paragraphs is demonstrated by the County's own requests for judicial notice of past election results. As noted above, these facts are also relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

g. Paragraph 24.

The County's Motion states the foregoing paragraph "concerns the County's policy for determining compensation for members of the County Board of Supervisors." (Motion at p. 9.) The paragraph in fact alleges that the formula for compensating the members of the Board of Supervisors is the same as the Measure F formula. This paragraph is relevant to show the County's

position on the legality of Measure F over time. The paragraph is also relevant in making credibility determinations. Furthermore, these facts are relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

h. Paragraphs 25-34, 47-48, and 52-53.

The County's Motion states the foregoing paragraphs "contain allegations regarding the parties' most recent collective bargaining negotiations beginning in 2018 and leading to a declaration of impasse." (Motion at p. 9.) The allegations contained in these paragraphs are relevant because they demonstrate the County's position upon which Petitioners relied during collective bargaining and negotiations. The County has varied its position on whether Measure F represented a floor or ceiling regarding compensation. The facts demonstrate that Measure F did not prevent the board from negotiating or determining overall compensation. The requirements set forth by Measure F are thus relevant to the amount of discretion the Board of Supervisors retains over setting compensation. (See *Kugler v. Yocum* (1968) 69 Cal.2d 371, 376 [grants of legislative authority must be accompanied by adequate safeguards to prevent its abuse].) Further, the paragraphs are relevant to credibility determinations, as they demonstrate the County's position over time, and memorialize the County's representations to Petitioners. These facts are also relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

i. Paragraphs 35-37 and 58-63.

The County's Motion states the foregoing paragraphs "contain allegations regarding a statutory factfinding proceeding the parties participated in following the negotiation impasse." (Motion at p. 10.) The factfinding process was presided over by an experienced mediator and arbitrator *at the request of County*. (See Exhibit "G" to the Amended Petition.) The factfinding is inherently relevant to the dispute as the factfinding process thoroughly developed the background of the dispute, and examined the legal positions of both parties. The findings of fact are judicially

noticeable for their veracity in addition to providing important background information and legal research to the Court. As discussed above, facts that are appropriately judicially noticeable are properly pleaded in complaints. (See *City of Hawthorne, supra,* 109 Cal.App.4th at 1678.) Moreover, the factfinding is relevant to demonstrate the parties' positions over time, and assist the Court in making credibility determinations. Thus, the facts as pleaded are relevant to the Petition. Furthermore, these facts are relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

j. Paragraphs 42-45.

The County's Motion states the foregoing paragraphs "contain allegations regarding the DSA's filing of an unfair practice charge before the Public Employment Relations Board ("PERB") and the County's response." (Motion at pp. 10-11.) Petitioner's unfair labor practice charge and the County's response (including their own unfair labor practice charge) are both judicially noticeable and relevant. (See *City of Hawthorne,* 109 Cal.App.4th at 1678.) The allegations contained in these paragraphs are relevant because they demonstrate the County's position upon which Petitioners relied during collective bargaining and negotiations. The paragraphs are also relevant to credibility determinations, as they demonstrate the County's position over time, and memorialize the County's representations to Petitioners. As noted above, these facts are also relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

k. Paragraphs 46 and 49-50.

The County's Motion states the foregoing paragraphs "consist of further unsupported speculation regarding the County's motives...for making certain proposals during collective bargaining." (Motion at p. 11.) As noted above, allegations made upon information and belief are decidedly appropriate at the complaint stage. (See *Doe, supra,* 42 Cal.4th at 570.) The County's motives for its repeatedly changing position on the legality and validity of Measure F are relevant

to demonstrate the County's position over time, and to assist the Court in making credibility determinations. The County's motives are also directly relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

l. Paragraph 51.

The County's Motion states the foregoing paragraph "contains allegations regarding the County's negotiations with another bargaining unit and subsequent implementation of salary changes for that bargaining unit." (Motion at p. 11.) The impact that the County's meandering position on Measure F has on collective bargaining units within the County is the precise subject matter of this dispute. The facts are further relevant because they demonstrate the County's position over time, and will assist the Court in making credibility determinations. The facts are also directly relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

m. Paragraph 54-57.

The County's Motion states the foregoing paragraphs "contain allegations regarding County's attempts to meet and confer with the DSA over its proposed repeal of Section 3.12.040." (Motion at pp. 11-12.) The allegations contained in these paragraphs are relevant because they demonstrate the County's position upon which Petitioners relied during collective bargaining and negotiations. The paragraphs are also relevant to credibility determinations, as they demonstrate the County's position over time, and memorialize the County's representations to Petitioners. These facts are relevant to the question of attorney's fees and damages. (See Gov. Code § 800 [awarding attorneys' fees and costs for government actions that are arbitrary and capricious; Code Civ. Proc. § 1021.5 [attorneys' fees granted for the enforcement of an important right affecting the public interest].)

///

///

C. The Disputed Paragraphs Comply with California Standards of Pleading.

The Petition is entitled to liberal construction. (Code Civ. Proc. § 452.) When reviewing pleadings, courts draw all reasonable inferences in favor of the allegations therein. (*Beck, supra,* 154 Cal. App. 3d at 379.) Courts "read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. (*Cryolife, supra,* 110 Cal. App. 4th at 1157.) Before striking a complaint, "every reasonable doubt must be made in favor of the pleading." (*Arnold v. Hibernia Savings & Loan Soc.* (1944) 23 Cal.2d 741, 744).

It is well settled that issues not raised in the pleadings generally cannot be adjudicated. (*Lein v. Parkin* (1957) 49 Cal.2d 397, 400-401 [en banc].) The Petition necessarily pleads the foundational facts required to properly present the disputed issues to the Court. The Petition must adequately frame all relevant issues in order for the court to properly decide what evidence is relevant to an ultimate determination. (See *Linder v. Cooley* (1963) 216 Cal.App.2d 390, 397.) The Petition must set forth facts upon which Petitioners will rely through the prosecution of the entire case, including a potential appeal, because parties may not raise issues on appeal that were not raised by the pleadings. (See *Viglione v. Cty. And Cnty. Of San Francisco* (1952) 109 Cal.App.2d 158, 159-160.) Allegations that "would entitle the plaintiff to relief, at least in some measure" are not properly stricken. (*Honan v Title Ins. & Trust Co.* (1935) 9 Cal.App. 2d 675, 678.) For these reasons, among others, striking a pleading "is a harsh proceeding, and should only be resorted to in extreme cases." (*Burns v. Scoofy* (1893) 98 Cal. 271, 276.)

The County's argument that the facts do not relate directly to the causes of actions pleaded is both erroneous and irrelevant. "California requires the pleading of facts pursuant to its system of 'code pleading'". (*Bach v. Cnty. of Butte* (1983) 147 Cal.App.3d 554, 561.) The County's Motion to Strike seeks to strip Petitioners' Petition of all relevant facts and turn it into a notice pleading, which is not appropriate in California courts. (See *Id.*) The relevance of the facts pleaded is appropriately determined by the Court, not the County's own self-serving averments that the disputed paragraphs are irrelevant. "It is an elementary principle of modern pleading that the nature and character of a pleading is to be determined from its allegations, regardless of what it may be called, and that the subject matter of an action and issues involved are determined from the facts

alleged rather than from the title of the pleadings". (*B.L.M. v. Sabo & Deitsch* (1997) 55 Cal.App.4th 823, 842 [citing cases] [internal punctuation and citations omitted].) "In short, a plaintiff is entitled to relief on any claim supported by the facts pleaded even if that claim is not mentioned in the title of the complaint." (*Id.*)

Here, all of the disputed paragraphs, as noted above, have multiple bases for relevance. The disputed facts are relevant because the facts as pleaded in the Petition frame the issues for the Court, and must be pleaded or forever forfeited. The Petition should be liberally construed, with all questions as to the relevance of the facts pleaded therein resolved in favor of Petitioners. This is not the type of extreme case that would warrant striking any of the disputed allegations. Thus, the County's Motion to Strike should be denied in its entirety.

IV. CONCLUSION

The County's Motion to Strike improperly seeks to strike over half of the Petition. The County entirely failed to comply with the controlling statute because it failed to adequately meet and confer and neglected to identify, with required specificity, the allegations that should allegedly be stricken from the Petition and the legal reasons for striking those allegations. Further, the allegations the County seeks to strike from the Petition are all demonstrably relevant. Each and every allegation contained in the Petition properly sets forth facts upon which some relief can be granted and adequately frames the relevant legal issues for the Court. The disputed facts, as pleaded, cannot properly be stricken, and striking the disputed facts would be error. Accordingly, the County's Motion to Strike should be denied in its entirety.

Respectfully Submitted:

DATED: February 17, 2022

MASTAGNI HOLSTEDT, APC

DAVID E. MASTAGNI, ESQ.
TAYLOR DAVIES-MAHAFFEY, ESQ.
Attorneys for Petitioners

PROOF OF SERVICE

SHORT TITLE OF CASE: ***Placer County DSA, et al. vs. County of Placer***

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and am not a party to the within action. My business address is 1912 I Street, Sacramento, California 95811. My e-mail is jdelgado@mastagni.com.

On **February 17, 2022**, I served the below-described document(s) by the following means of service:

X BY OVERNIGHT DELIVERY [C.C.P. §§1013(c) & (d)]:
I enclosed the below-described documents in a sealed envelope/package provided by an overnight delivery carrier and addressed to the persons as set forth below. I placed the envelope/package for collection and overnight delivery at the overnight delivery carrier's office or regularly utilized drop box; and

X BY ELECTRONIC SERVICE [C.C.P. §1010.6(a)]:
Based on a court order or an agreement of the parties to accept electronic service, I caused a .pdf version of the below-described documents to be sent to the persons at the electronic mail addresses set forth below.

NAME/DESCRIPTION OF DOCUMENT(S) SERVED:

- **PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE**

ADDRESSES OF SERVICE:

Michael Youril myouril@lcwlegal.com Lars Reed lreed@lcwlegal.com Liebert Cassidy Whitmore 5250 North Palm Ave, Ste 310 Fresno, CA 93704	

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed on **February 17, 2022,** at Sacramento, California.

Jessica Delgado

Exhibit 12

DAVID E. MASTAGNI, ESQ. (SBN 204244)
davidm@mastagni.com
TAYLOR DAVIES-MAHAFFEY, ESQ. (SBN 327673)
tdavies-mahaffey@mastagni.com
MASTAGNI HOLSTEDT
A Professional Corporation
1912 "I" Street
Sacramento, California 95811
Telephone: (916) 446-4692
Facsimile: (916) 447-4614

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO, Petitioners, vs. COUNTY OF PLACER, Respondent.	Case No.: S-CV-0047770 **DECLARATION OF DAVID E. MASTAGNI IN SUPPORT OF PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE**

I, David E. Mastagni Declare:

1. I am an attorney, duly licensed to practice law within the State of California, employed as a Partner at Mastagni Holstedt, A.P.C., the attorneys of record for Petitioners the Placer County Sheriff's Deputy Association and Noah Frederito ("Petitioners") in the above-captioned matter.

2. I have personal knowledge of the following facts. If called and sworn as a witness, I could and would testify to the following:

3. On December 21, 2021, Petitioners filed a Petition for Writ of Mandate in Placer County Superior Court, requesting Declaratory and other relief regarding the County of Placer's ("Respondent") unilateral repeal of Placer County Code section 3.12.040, which codifies Measure F.

4. On January 7, 2022, I was contacted by Respondent's counsel, Michael Youril, via an email regarding his intention to demur to the Petition for Writ of Mandate and to move to strike paragraphs 10-80 of the Petition for Writ of Mandate. The only basis for the motion to strike stated was, "[m]ost of the above is irrelevant to the pending matter and primarily involves matters that are still pending before the PERB Board." A true and correct copy of the January 7, 2022 email is attached hereto as Exhibit 1.

5. On January 12, 2022, at 9:30 a.m., Taylor Davies-Mahaffey and I met and conferred with Mr. Youril and Lars Reed by telephone. During our very brief conversation, Respondent's counsel restated they intended to move to strike paragraphs 1-80 from the Petition. Initially, opposing counsel asserted the paragraphs at issue were relevant to my client's PERB Charge alleging bad faith bargaining and other unfair labor practices. I explained that while the actions before PERB involved some overlapping factual circumstances, the legal cause of action and relief were distinct. I further informed Mr. Youril that the relevance of the 70 paragraphs he identified varied by subject matter and relevance to this action. I offered examples, pointing out that some paragraphs dealt with the parties bargaining over measure F and overall compensation, other dealt with subsequent voter initiatives to retain Measure F, other dealt with the County's inconsistent interpretations of Measure F and misrepresentations. I also explained that the allegations had multiple and varied relevance, including the legal theories and the remedies. Regarding remedies, I explained that impacts of the County's actions and their arbitrariness are relevant to fee liability. He suggested that allegations related to attorney fee liability did not need to be included in the Petition.

6. I repeatedly invited him to discuss each allegation at issue so we could properly confer over its relevance and advised him that it was not feasible to adequately meet and confer over 70 paragraphs of the Petition collectively. I advised that my client was willing to amend the Petition if he could articulate individualized grounds for each allegation he desired to strike. I advised that insisting on conferring over all 70 paragraphs collectively, would waste judicial resources and spike the litigation costs as the individualized consideration would end up being briefed. Respondent's counsel consistently declined to discuss the relevance of the individual

paragraphs. As an alternative, I also suggested Respondent limit the number of paragraphs it sought to strike to make the meet and confer discussions more fruitful. Respondent's counsel declined those offers as well.

7. On January 13, 2022, I wrote a letter to Mr. Youril memorializing our January 12, 2022 telephone call. I reiterated to Mr. Youril that we could go through the Petition paragraph by paragraph to discuss the relevance of each. I further reiterated that were Respondent to reduce the number of paragraphs it sought to strike, the meet and confer discussions would be more efficient. Respondent declined to reduce the amount of material it sought to strike, or to go over the specific allegations it contended were irrelevant. A true and correct copy of the January 13 letter is attached hereto as Exhibit 2. A true and correct copy of the email correspondence between counsel regarding the motion to strike is attached hereto as Exhibit 3.

8. In the spirit of cooperation and the hope of avoiding the expenses associated with a motion to strike, Petitioners filed an Amended Petition on January 21, 2022, unilaterally removing some of the disputed material. None of the amendments were agreed upon during the meet and confer call.

9. On January 28, 2022, I briefly spoke with Respondent's counsel regarding the Amended Petition. Mr. Youril summarily advised that his position regarding the motion to strike was unchanged and there was nothing further to discuss. I again offered to meaningfully discuss the relevance of each allegation he intended to strike, but he again declined meet and confer over the allegations with any specificity.

10. On February 2, 2022, without meaningfully meeting and conferring in good faith over the allegations at issue in the Amended Petition, Respondent filed their Motion to Strike the Amended Petition and Demurrer to the Amended Petition.

///

///

///

///

///

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Respectfully Submitted:

DATED: February 17, 2022

MASTAGNI HOLSTEDT, APC

DAVID E. MASTAGNI, ESQ.
Attorney at Law

EXHIBIT 1

Jessica Delgado

From: Michael D. Youril <MYOURIL@lcwlegal.com>
Sent: Friday, January 7, 2022 4:10 PM
To: David E. Mastagni; Taylor Davies-Mahaffey
Cc: Che I. Johnson; Lars T. Reed
Subject: Placer County/DSA
Attachments: Placer County DSA Writ w_o exhibits.PDF

Good afternoon Taylor and David,

I am writing to meet and confer regarding the attached writ petition. The County intends to file a motion to strike and a demurrer. Can you please let me know some times Monday, Tuesday, or Wednesday that either of you are available for a call?

The grounds for the demurrer should be relatively well defined at this point, as they have been discussed extensively as part of negotiations and the PERB proceedings. Measure F is legally ineffective. Specifically, the primary grounds for the demurrer are that the California Constitution provides the governing body of a county exclusive authority to set compensation. (Cal. Const., art. XI, § 1(b).) The County Charter provision cited in Paragraph 7 of the writ of mandate supersedes Measure F and provides similar authority to the County BOS to set compensation. The exclusive authority of the governing body of a county to set compensation has been affirmed several times. (See e.g., *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296; *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322.) There are several other similar cases.

In addition, Measure F is preempted by the MMBA. (See e.g., *Voters for Responsible Ret. v. Bd. of Supervisors* (1994) 8 Cal.4th 765.)

Accordingly, the County's repeal and replacement of County Code section 3.12.040, and its actions in adjusting compensation for DSA members, were lawful and well within the County's authority.

The County will also move to strike the following provisions:

- Paragraphs 10-80.

Most of the above is irrelevant to the pending matter and primarily involves matters that are still pending before the PERB Board.

As noted above, please let me know your availability Monday, Tuesday, or Wednesday for a call.

Thank you,

Michael

Michael Youril | Partner

LCW Liebert Cassidy Whitmore
5250 North Palm Avenue, Suite 310
Fresno, CA 93704
direct: 559.256.7813 | fax: 559.449.4535
myouril@lcwlegal.com | bio | website

EXHIBIT 2

DAVID P. MASTAGNI
JOHN R. HOLSTEDT
CRAIG E. JOHNSEN
BRIAN A. DIXON
STEVEN W. WELTY
STUART C. WOO
DAVID E. MASTAGNI
RICHARD J. ROMANSKI
PHILLIP R.A. MASTAGNI
KATHLEEN N. MASTAGNI STORM
SEAN D. HOWELL
WILLIAM P. CREGER
SEAN D. CURRIN
DANIEL L. OSIER
KENNETH E. BACON
GRANT A. WINTER
JOSHUA A. OLANDER
HOWARD A. LIBERMAN
ZEBULON J. DAVIS
DOUGLAS T. GREEN
MARK E. WILSON
MELISSA M. THOM

Sacramento Office
1912 I Street
Sacramento, CA
95811
(916) 446-4692
Fax (916) 447-4614
Tax ID #94-2678460

MASTAGNI HOLSTEDT
A Professional Corporation

All Correspondence to Sacramento Office
www.mastagni.com

Rancho Cucamonga Office
(909) 477-8920

Chico: (530) 895-3836
San Jose: (408) 292-4802
Stockton: (209) 948-6158
Los Angeles: (213) 640-3529

JASON M. EWERT
JONATHAN D. CHAR
BRETT D. BEYLER
VANESSA A. MUNOS
KIMBERLY A. VELAZQUEZ
JOSEPH A. HOFFMANN
MICHAEL P. R. REED
ANISH K. SINGH
JOEL M. WEINSTEIN
TAYLOR DAVIES-MAHAFFEY
NATHAN SENDEROVICH
SAMUEL S. SIAVOSHI
BEHNAM M. PARVINIAN
CARLY M. MORAN
CLARISSA MEDRANO
CHRISTOPHER J. WALSH
BYRON G. DANELL
CHRISTINA D. ALON
DAVID E. SNAPP
DENNISE S. HENDERSON
MONTANA MASSONE
SUCHETA ROY

January 13, 2022

Via Electronic & U.S. Mail

Michael Youril
Lars Reed
Liebert Cassidy Whitmore
5250 North Palm Ave, Ste 310
Fresno, California 93704
E-Mail: myouril@lcwlegal.com
lreed@lcwlegal.com

Re: *Placer County Deputy Sheriffs' Assoc. v. County of Placer*;
Meet and Confer over the County's Demurrer and Motion to Strike

Dear Mr. Youril:

The purpose of this letter is to summarize our conversation during the parties' meet and confer session on January 12, 2022. On January 7, you informed our office via email that the County intended to file a demurrer and a motion to strike paragraphs 10-80 of the Complaint. We participated in a telephonic meet and confer session on January 12 at 9:30 am.

During the meet and confer, you expressed concerns that paragraphs 10-80 were not relevant to the legal questions raised by the complaint. We stated that the relevance of each of the 70 paragraphs varied based on subject matter. We repeatedly offered to go through each paragraph one by one and discuss the relevance with you. You declined these offers. As stated during our meeting, discussing the allegations in broad strokes does not allow consideration of the differences in subject matter and areas of relevance. We also suggested that you limit the paragraphs you wished to strike so we could more efficiently and thoroughly discuss each one. You again declined to do so.

///

///

///

In conclusion, we also suggested that proceeding just with the demurrer would be a more efficient and less costly method of adjudicating the legal questions.

Sincerely,
MASTAGNI HOLSTEDT, A.P.C.

DAVID E. MASTAGNI
Attorney at Law

DEM/jd

cc: Che Johnson

EXHIBIT 3

Jessica Delgado

From: Taylor Davies-Mahaffey
Sent: Tuesday, January 18, 2022 7:11 PM
To: Michael D. Youril; David E. Mastagni
Cc: Lars T. Reed; Che I. Johnson; Jessica Delgado
Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

March 3rd works for us.

Taylor Davies-Mahaffey | Associate
MASTAGNI HOLSTEDT, A.P.C.
Labor and Employment Department
1912 I Street, Sacramento, CA 95811
Main: (916) 446-4692 | Fax: (916) 447-4614
Direct: (916) 491-4248 | Cell: (916) 955-3592

From: Michael D. Youril <MYOURIL@lcwlegal.com>
Sent: Tuesday, January 18, 2022 5:16 PM
To: David E. Mastagni <davidm@mastagni.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>
Cc: Lars T. Reed <lreed@lcwlegal.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>; Jessica Delgado <jdelgado@mastagni.com>
Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

They only hear motions on Thursday, so next available is March 3, if the Court has availability.

From: David E. Mastagni <davidm@mastagni.com>
Sent: Tuesday, January 18, 2022 3:19 PM
To: Michael D. Youril <MYOURIL@lcwlegal.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>
Cc: Lars T. Reed <lreed@lcwlegal.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>; Jessica Delgado <jdelgado@mastagni.com>
Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

Michael,

As I previously indicated, we are willing to meet and confer individually over each of the 70 paragraphs you seek to strike. However, your insistence on meeting and conferring over the relevancy of 70 separate paragraphs of the complaint collectively is not feasible or reasonable. The allegations identified cover a variety of factually allegations

relevant to the underlying legal claims, including the meaning, intent and historical interpretation of Measure F, the meaning, intent and historical interpretation of the relevant sections of the County Charter, the meaning and distinction between salary and compensation, and the requested remedy. As you know, Petitioners seek a make whole remedy, as well as fees and costs of suit. The County's ever changing public representations, statements against interest, and interpretations of Measure F and the Charter are directly relevant to its potential liability for fees and costs. Fore example, fee are available under Government Code section 800 based upon the "arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity." The allegations are also relevant to Petitioners claims that this action, if successful, will vindicate an important public right and conferred a significant benefit on a large class of persons, i.e. the rights and will of the voters, and should be paid by the County in the interests of justice. (See, CCP 1021.5.)

Additionally, I am unavailable on February 24, 2022. Can you please provide alternative hearing dates.

Sincerely,

David

David E. Mastagni | Partner
MASTAGNI HOLSTEDT, A.P.C.
Labor and Employment Department
1912 I Street, Sacramento, CA 95811
Main: (916) 446-4692 | Fax: (916) 447-4614
Direct: (916) 491-4289 | Cell: (916) 719-9413

From: Michael D. Youril <MYOURIL@lcwlegal.com>
Sent: Friday, January 14, 2022 1:32 PM
To: David E. Mastagni <davidm@mastagni.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>
Cc: Lars T. Reed <lreed@lcwlegal.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>; Jessica Delgado <jdelgado@mastagni.com>
Subject: RE: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

Good afternoon David and Taylor,

Following-up on your attached January 13, 2022 letter, the County's position remains that the only questions for resolution in the writ are (1) whether the County was required to follow Election Code section 9125, and (2) whether the County's imposition of terms was valid. The second question depends entirely on the answer to the first question. Both of our clients have an interest in knowing the outcome of the Elections Code question and it is properly determined by a court. However, neither party needs significant facts to frame that question for resolution. The only facts relevant to your causes of action are Measure F, the County's repeal of the ordinance codifying it, and the County's implementation of new compensation terms.

I disagree that past practice or non-binding interpretations by various individuals are relevant to the outcome of the legal question. I certainly do not believe the facts concerning negotiations that are currently before PERB are relevant to that question. The Complaint includes headings such as, "Contract Negotiations and Impasse," "The County's Improper Conduct During Factfinding Proceedings," etc. Those issues are clearly within the scope of the unfair practice charge

your office filed with PERB and have no relevance to the legal question at issue before the court. Our concern is that if the County does not move to strike those provisions, and if the demurrer were overruled, then the scope of the writ proceedings would be greatly expanded and include matters that are squarely within the scope of the unfair practice. This would basically result in litigation in dual forums, which would be very inefficient for both of our clients.

The County submits that it would be less costly and more efficient for the parties to proceed on the legal question, which would initially only require the demurrer. The legal question can be decided based on the first 9 paragraphs and 81 onward. If you are willing to reconsider, please let me know by Tuesday, January 18, 2022, otherwise I will assume we continue to disagree.

The County has reserved February 24, 2022 at 8:30 am as the date for the demurrer and motion to strike. Let me know immediately if there is a conflict.

Thank you,

Michael

From: Jessica Delgado <jdelgado@mastagni.com>
Sent: Thursday, January 13, 2022 4:39 PM
To: Michael D. Youril <MYOURIL@lcwlegal.com>; Lars T. Reed <lreed@lcwlegal.com>
Cc: David E. Mastagni <davidm@mastagni.com>; Taylor Davies-Mahaffey <tdavies-mahaffey@mastagni.com>; Che I. Johnson <CJOHNSON@lcwlegal.com>
Subject: Placer County DSA v. County of Placer - Meet and Confer over the County's Demurrer and Motion to Strike

---

Good Afternoon,

Please see the attached correspondence from attorney David E. Mastagni. A copy will follow by mail.

Thank you,

Jessica Delgado | Paralegal
MASTAGNI HOLSTEDT, A.P.C.
Labor and Employment Department
1912 I Street, Sacramento, CA 95811
Main: (916) 446-4692 | Fax: (916) 447-4614
Direct: (916) 318-4645

This email message has been delivered safely and archived online by Mimecast.

PROOF OF SERVICE

SHORT TITLE OF CASE: ***Placer County DSA, et al. vs. County of Placer***

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and am not a party to the within action. My business address is 1912 I Street, Sacramento, California 95811. My e-mail is jdelgado@mastagni.com.

On **February 17, 2022**, I served the below-described document(s) by the following means of service:

X BY OVERNIGHT DELIVERY [C.C.P. §§1013(c) & (d)]:
I enclosed the below-described documents in a sealed envelope/package provided by an overnight delivery carrier and addressed to the persons as set forth below. I placed the envelope/package for collection and overnight delivery at the overnight delivery carrier's office or regularly utilized drop box; and

X BY ELECTRONIC SERVICE [C.C.P. §1010.6(a)]:
Based on a court order or an agreement of the parties to accept electronic service, I caused a .pdf version of the below-described documents to be sent to the persons at the electronic mail addresses set forth below.

NAME/DESCRIPTION OF DOCUMENT(S) SERVED:

- **DECLARATION OF DAVID E. MASTAGNI IN SUPPORT OF PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE**

ADDRESSES OF SERVICE:

Michael Youril myouril@lcwlegal.com Lars Reed lreed@lcwlegal.com Liebert Cassidy Whitmore 5250 North Palm Ave, Ste 310 Fresno, CA 93704	

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed on **February 17, 2022,** at Sacramento, California.

Jessica Delgado

Exhibit 13

DAVID E. MASTAGNI, ESQ. (SBN 204244)
davidm@mastagni.com
TAYLOR DAVIES-MAHAFFEY, ESQ. (SBN 327673)
tdavies-mahaffey@mastagni.com
MASTAGNI HOLSTEDT
A Professional Corporation
1912 "I" Street
Sacramento, California 95811
Telephone: (916) 446-4692
Facsimile: (916) 447-4614

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO, Petitioners, vs. COUNTY OF PLACER, Respondent.	Case No.: S-CV-0047770 **NOTICE OF NON-STIPULATION TO HAVE COUNTY'S DEMURRER AND MOTION TO STRIKE HEARD BY COMMISSIONER** Date: March 3, 2022 Time: 8:30 a.m. Dept: 42

TO THE COURT AND TO RESPONDENTS AND THEIR ATTORNEY OF RECORD:

Pursuant to Local Rule 20.2.B, Petitioners, Placer County Deputy Sheriffs' Association and Noah Frederito ("Petitioners"), hereby give notice that Petitioners do not stipulate to having the First Amended Petition, County's Demurrer to the First Amended Petition or the County's Motion to Strike Portions of the First Amended Petition, heard by a Commissioner. Petitioners request that both motions be heard by the assigned judge.

Dated: February 18, 2022

Respectfully Submitted,

MASTAGNI HOLSTEDT, A.P.C.

DAVID E. MASTAGNI
Attorneys for Petitioners

PROOF OF SERVICE

SHORT TITLE OF CASE: ***Placer County DSA, et al. vs. County of Placer***

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and am not a party to the within action. My business address is 1912 I Street, Sacramento, California 95811. My e-mail is jdelgado@mastagni.com.

On **February 18, 2022**, I served the below-described document(s) by the following means of service:

X BY U.S. FIRST-CLASS MAIL [C.C.P. §§1013 & 1013(a)]:
I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's business practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully paid; and

X BY ELECTRONIC SERVICE [C.C.P. §1010.6(a)]:
Based on a court order or an agreement of the parties to accept electronic service, I caused a .pdf version of the below-described documents to be sent to the persons at the electronic mail addresses set forth below.

NAME/DESCRIPTION OF DOCUMENT(S) SERVED:

- **NOTICE OF NON-STIPULATION TO HAVE COUNTY'S DEMURRER AND MOTION TO STRIKE HEARD BY COMMISSIONER**

ADDRESSES OF SERVICE:

Via U.S. Mail & E-Mail Michael Youril myouril@lcwlegal.com Lars Reed lreed@lcwlegal.com Liebert Cassidy Whitmore 5250 North Palm Ave, Ste 310 Fresno, CA 93704	

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed on **February 18, 2022,** at Sacramento, California.

_____
Jessica Delgado

Exhibit 14

Michael D. Youril, Bar No. 285591
myouril@lcwlegal.com
Lars T. Reed, Bar No. 318807
lreed@lcwlegal.com
LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704
Telephone: 559.256.7800
Facsimile: 559.449.4535

Attorneys for Respondent COUNTY OF PLACER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO, Petitioners, v. COUNTY OF PLACER, Respondent.	Case No. S-CV-0047770 Complaint Filed: December 21, 2021 **RESPONDENT COUNTY OF PLACER'S REPLY TO PETITIONERS' OPPOSITION TO DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF** Date: March 3, 2022 Time: 8:30 a.m. Dept.: 42 **(*Exempt from filing fees pursuant to Gov. Code, § 6103.)**

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

I. INTRODUCTION

This case arises from the Placer County Board of Supervisors' efforts to negotiate and determine compensation for deputy sheriffs in order to provide salary increases greater than what the formula the parties have historically used would provide, and the Deputy Sheriffs' Association's attempt to prevent the Board from exercising their authority – and fulfilling their obligation as elected representatives – to do so. Petitioners argue that the Board has no authority to determine or even negotiate over salary due to a 1976 ballot initiative, Measure F, which on its face conflicts with the Constitution, the MMBA, and the County Charter. The County has repeatedly explained to the DSA the legal grounds for why a ballot initiative depriving the Board of Supervisors of authority to negotiate and set compensation is void and unenforceable.

Case law showing Measure F is unconstitutional is well-established. Nonetheless, the DSA continues the present charade, presenting arguments that are facially specious and blatantly mischaracterizing both governing law and the County's legal arguments. While Petitioners claim that their goal is to protect the will of the voters, Placer County voters enacted a County Charter in 1980 that expressly designates the Board of Supervisors as responsible for negotiating and setting compensation, and the voters go to the polls every two years to select their representatives on the Board. Petitioners seek to deprive the Board of its constitutional and charter-given authority to determine salaries, and to deprive both the Board and themselves of the right to negotiate salaries. This Court should disregard these spurious arguments, and sustain the demurrer without leave to amend.

II. ARGUMENT

A. PETITIONERS' ARGUMENTS IN SUPPORT OF THE FIRST CAUSE OF ACTION ARE UNAVAILING

1. The Opposition Fails To Address a Well-Established Exception to the Presumptively Broad Right of Initiative.

Petitioners repeatedly assert that the right to initiative is generally coextensive with the legislative power of the local governing body; however, the Opposition conveniently omits the exception to this rule that forms the basis for the County's demurrer, namely that in certain cases,

authority over a particular matter is "delegated exclusively to the County's governing body, precluding the right to initiative and referendum." (*Gates v. Blakemore* (2019) 39 Cal.App.5th 32, 38, [citing *DeVita v. City of Napa* (1995) 9 Cal.4th 763 , 776]; *Citizens for Jobs & the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1326.) Instead, the Opposition disingenuously argues that the County's constitutional argument is premised solely on the holdings of *Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341 and *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, which addressed a separate constitutional sentence. By so doing, Petitioners avoid the clear legal question before this Court: Can a local initiative divest the County's governing body of the right and duty to negotiate and set salaries for County employees? The answer is "no."

The County demurs on the grounds that Measure F as enacted in 1976 violates Article XI, Section 1(b) of the California Constitution by depriving the Board of Supervisors of its constitutional authority to set employee compensation. Section 1(b) assigns the authority to set compensation for County employees specifically to the county's "governing body." *Meldrim* and *Jahr* show how Courts of Appeal have interpreted the term "governing body" in the analogous situation of supervisor compensation. That situation may be covered by a different *sentence* in Section 1(b), but that sentence is nonetheless part of the very same section of the Constitution; Petitioners would have this Court infer that the term "governing body" carries a different meaning in two sentences of the same constitutional provision.

Petitioners mischaracterize the rulings of both *Meldrim* and *Jahr* when they assert that "The courts reasoned that the Legislature's inclusion of the term 'referendum' indicated that the Legislature intended to foreclose the right to initiative as to supervisors' compensation." (Opposition, p. 11.) This assertion conflates two separate legal issues in an attempt to minimize the import of the decisions. The Court in *Meldrim* unambiguously stated that it based its holding – that supervisor compensation is not subject to initiative – entirely on the clear assignment of compensation-setting authority to the "Governing body (and not the 'county' or the 'voters')." (*Meldrim, supra,* 57 Cal.App.3d at 343.) Contrary to Petitioners' assertion, the *Meldrim* decision was not "predicated upon" the specific mention that supervisor compensation is subject to referendum. The decision's discussion of that issue appears only later in the decision – after

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

stating that further explanation of the Court's interpretation of Section 1(b) was "unnecessary" – to reject a counter-argument that the inclusion of the word "referendum" carried with it an implied right to initiative. (*Id.* at 345.) *Jahr* similarly addressed as *independent* questions whether the term "governing body" includes "voters" and whether an express right of referendum implies a right of initiative. (*Jahr*, *supra*, 70 Cal.App.4th at 1254-55.) The court answered "no" to both.

To summarize, the County demurs on the principle that – although the initiative power is *generally* broad – where the Constitution delegates exclusive authority to a county's "governing body" this precludes the right to initiative. (*Gates*, *supra*, 39 Cal.App.5th at 38.) As with compensation for county supervisors, Section 1(b) specifically delegates authority over county employee compensation to the "governing body." *Meldrim* and *Jahr* held the term "governing body" as used in Section 1(b) excludes the electorate. Similarly, Section 302 of the County Charter assigns authority even more clearly to the "Board of Supervisors."

The Opposition never addresses the County's argument that Measure F unconstitutionally restricts the Board of Supervisors' ability to determine the Sheriff's Office budget by taking the largest contributing factor – deputy salaries – out of the Board's hands. (See *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826.)

2. *Kugler v. Yocum* and *Spencer v. City of Alhambra* Are Distinguishable.

The Opposition repeatedly argues that *Kugler v. Yocum* (1968) 69 Cal.2d 371, and *Spencer v. City of Alhambra* (1941) 44 Cal.App.2d 75, have affirmed the right to set public employee compensation by initiative. But neither of these cases are relevant to the interpretation of Article XI, Section 1(b) of the Constitution. *Kugler* addressed whether an initiative was a proper means to fix a minimum salary for firefighters in the City of Alhambra. (*Kugler*, *supra*, 69 Cal.2d at 373.) *Spencer* addressed a similar, earlier, initiative for police officers in the same city. (*Spencer*, *supra*, 44 Cal.App.2d at 76.) Both decisions concluded that the initiative was a proper exercise of the initiative power under the City Charter, which granted the electorate the right to adopt any ordinance which the City Council might enact. (*Kugler*, *supra*, 69 Cal.2d at 374; *Spencer*, *supra*, 44 Cal.App.2d at 78.) Thus, both decisions concerned the provisions of a city charter, "which by and large is the supreme law as to municipal affairs." (*Meldrim*, *supra*,

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

57 Cal.App.3d at 345 [citing *Duran v. Cassidy* (1972) 28 Cal.App.3d 574, 583].)

By contrast, when Measure F appeared on the ballot in 1976, Placer County was a general law county, meaning that the proper delegation of salary-setting authority was governed exclusively by the Constitution, Article XI, Section 1(b). Neither *Kugler* nor *Spencer* ever addressed this constitutional provision, which applies only to counties, not to cities. Thus, these cases are irrelevant to the interpretation and enforcement of Section 1(b).

3. The Opposition Misconstrues *Voters for Responsible Retirement*.

The Opposition boldly asserts that *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765 ("*VFRR*") "unequivocally foreclosed" the County's argument regarding Section 1(b) and that *VFRR* "broadly supports initiative powers over local employee compensation." This assertion fundamentally misconstrues the decision in that case.

As the Fourth District Court of Appeal noted, "[t]he Supreme Court [in *VFRR*] was focused on whether employee compensation was subject to referendum, not whether [compensation setting] could be accomplished through initiative." (*Center for Community Action & Environmental Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689, 702.) The only discussion in *VFRR* regarding Article XI, Section 1(b) specifically concerns the referendum power: The respondent argued that the specific language that county supervisor compensation is subject to referendum implied that other compensation decisions were not; the appellant argued that legislative history showed a clear intent to subject employee compensation decisions to referendum; the Court rejected both arguments, concluding that Section 1(b) neither guarantees nor restricts the right to referendum over employee compensation. (*Id.* at 648-651.)

Other than collective references to the electorate's "initiative and referendum powers," *VFRR* never addresses the scope of the initiative power specifically.[1] (E.g. *id.* at 652.) Several subsequent court decisions have expressly rejected the suggestion that initiative and referendum powers are always coextensive. (E.g. *Jahr*, *supra*, 70 Cal.App.4th at 1259; *Center for Community Action*, *supra*, 26 Cal.App.5th at 706.) Of these, *Jahr*, discussed above, recognized the decision in

[1] "An opinion is not authority for propositions not considered." (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1999) 19 Cal.4th 1182, 1195.)

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

VFRR, and still reaffirmed the holding in *Meldrim* that Section 1(b)'s delegation of compensation-setting authority to the "governing body" precludes legislation by initiative.

The various broad statements in *VFRR* about the general scope of the initiative power are at best *dicta*. They have no bearing on whether the specific assignment of compensation-setting authority to the Board of Supervisors precludes legislation by initiative.

4. <u>The County's Ability To Provide Employment Benefits Other than Salary Does Not Cure Measure F's Constitutional Invalidity, Nor Does it Make Measure F Consistent With the County Charter.</u>

At several points, the Opposition argues that Measure F is consistent with the Board's authority to set compensation – under either the Constitution or the County Charter – because its formula only governs "salary" and not the whole field of "compensation." This argument gets the issue backwards. As the Opposition concedes, compensation is a broad term that includes both salary and other benefits. Courts have repeatedly held that a statute cannot infringe on the governing body's constitutional authority over compensation, even if it would only govern one aspect of total compensation. In both *In re Work Uniform Cases* (2005) 133 Cal.App.4th 328, 338, and *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 643, the First District Court of Appeal held that various Labor Code provisions – on uniform allowances and overtime pay, respectively – could not apply to counties because they would interfere with the governing body's exclusive authority over "compensation" under Section 1(b). Following that reasoning, Petitioners' argument that it would be consistent with the Constitution – or the Charter, which similarly provides the Board with broad authority over employee "compensation" – to take away the Board's authority over the single largest aspect of compensation is clearly specious.

The Opposition's only other response to the argument that the County Charter legally superseded Measure F is a brief statement that the enactment of Charter Section 607 "bolstered the initiative powers of the Placer County [electorate]."[2] However, Charter Section 607 is irrelevant to the validity of Measure F: Measure F was enacted in 1976, prior to the Charter. And

[2] Section 607(a) of the County charter states that the electors of Placer County may "by majority vote and pursuant to general law … Exercise the powers of initiative and referendum."

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

at no point after 1980 have Placer County voters enacted a similar ballot initiative. If, *arguendo*, voters had authority to re-enact Measure F after 1980, they have not done so.[3]

5. Any Non-Initiative Action to Adopt or Implement the Measure F Formula Is Irrelevant to Whether Measure F Is Enforceable *As a Ballot Initiative* For Purposes of Elections Code § 9125.

The Opposition makes much of the fact that over the years various traditional County ordinances and resolutions – i.e. Board actions that were *not* enacted by way of initiative – have adopted or implemented the salary-setting formula originally set forth in Measure F, such as by codifying the formula in County Code section 3.12.040, or incorporating it into the County's labor agreement with the DSA. Petitioners also cite to a 2003 editorial in the Auburn Journal by then-County CEO Jan Christofferson discussing Measure F. The County does not dispute that these events occurred, but they are also irrelevant to the Petitioners' claim that the County's repeal of Section 3.12.040 in September 2021 violated Elections Code section 9125.

Section 9125 provides: "No ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance." The plain statutory language shows that this *only* applies to an ordinance "proposed by initiative petition." To the extent the County may have enacted a traditional ordinance setting a salary formula, incorporated a salary formula into a labor agreement, or implemented a policy of providing salary increases according to a formula, none of these actions fall under the protection of Section 9125, and any of them could be repealed or withdrawn without voter approval. A newspaper editorial by a County official certainly would not create an enforceable ballot initiative where none previously existed. Accordingly, none of these issues have any bearing on whether the County's repeal of Section 3.12.040 violated Section 9125.

To the extent Petitioners are arguing that prior representations and actions by the County

[3] As discussed in more detail below, the failed attempts to *repeal* Measure F by way of a ballot measure are not equivalent to an initiative petition affirmatively *enacting* the same provision. And the County maintains that even after 1980, and even if enacted as a Charter Amendment, a ballot initiative containing the same terms as Measure F would still be preempted by the MMBA.

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

which (expressly or implicitly) suggested Measure F was legally binding now estop the County from asserting that Measure F was constitutionally invalid from the start, that argument fails as a matter of law, for several reasons. First, in order for estoppel to apply, a representation must generally be a statement of *fact*; a statement about a legal issue – such as the constitutionality of a ballot measure – does not preclude the party making it from later changing its position. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1315 [citing *McKeen v. Naughton* (1891) 88 Cal. 462, 467].) Second, estoppel may not be invoked to contravene constitutional provisions that define a public entity's powers. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28 ["[N]o court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations."].) Third, the law particularly disfavors estoppel where the party raising the argument is represented by counsel, as attorneys are charged with knowledge of the law in California. (*Kunstman v. Mirizzi* (1965) 234 Cal.App.2d 753, 757; *Tubbs v. Southern Cal. Rapid Transit Dist.* (1967) 67 Cal.2d 671, 679.) Here, Petitioners were represented by Counsel who had equal access to the state constitution, county charter and the MMBA at all relevant times.

6. <u>The Failed 2002 and 2006 Ballot Measures Have No Legal Effect.</u>

Intermingled with its arguments about other County actions and representations, the Opposition places particular emphasis on the election results of 2002 and 2006, when Measure R (2002) and Measure A (2006) proposed to repeal County Code section 3.12.040, and both measures were rejected by the voters. (Opposition pp. 14-15.) Petitioners argue that "any alleged defects regard[ing] the 1976 enactment were cured by the 2002 and 2006 initiative elections to retain it." (Opposition p. 14.) This argument is fundamentally flawed for two reasons.

First, the Opposition presupposes that the 2002 and 2006 election results had some legal effect, even though both measures ***failed***. As a matter of law, a failed legislative action has no legal effect whatsoever. Whatever the legal status of Measure F was at the time of each repeal attempt, a failed ballot measure does not – and cannot – affect that status in the slightest. Second, neither Measure R nor Measure A were *initiatives*. An initiative is an ordinance enacted through Elections Code sections 9100 to 9126, including a petition and a signature-gathering process. Neither Measure R nor Measure A were placed on the ballot through this procedure. Rather, both

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

measures were placed on the ballot directly by a Board resolution at the request of the DSA. (See Petition, Exhibits A and C [as corrected in Petitioners' February 17, 2022 Notice of Errata].)

With this in mind, it is readily apparent that the 2002 and 2006 elections cannot support Petitioners' claim that the County violated Elections Code section 9125. Again, Section 9125 prohibits the County from repealing or amending without voter approval any "ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters." Neither Measure R nor Measure A qualify for this protection: neither measure was an "ordinance proposed by initiative petition," neither was ever adopted either by the Board or by the voters, and neither measure addressed the Board's authority under the Charter. These elections are simply irrelevant to Petitioners' causes of action.

7. <u>The MMBA Preempts Local Laws That Interfere With Collective Bargaining Procedure.</u>

Responding to the County's argument that Measure F fails to leave room for either party to negotiate over salary, the Opposition argues that "the mere fact that the subject matter of an initiative is within the scope of bargaining under the MMBA, does not automatically mean that the MMBA preempts it" and that the MMBA "merely requires that the governing body meet and confer with the union prior to placing such initiatives on the ballot." (Opposition, p. 17.) This is a disingenuous mischaracterization of both the County's argument and the applicable law, and entirely misses the point. The cases cited in the Opposition – *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898 and *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 – discuss the MMBA's restrictions relating to when a public agency can sponsor a ballot initiative affecting negotiable subjects. This is a separate issue from whether the MMBA preempts the actual substance of the initiative.

As the Supreme Court held in *VFRR*, it is indisputable that the procedures set forth in the MMBA – including the process by which salaries are fixed – are a matter of statewide concern and preempt inconsistent local procedures. (*VFRR*, *supra*, 8 Cal.4th at 781.) In particular, mandatory negotiable subjects, such as wages, cannot be declared "nonnegotiable." (*Huntington Beach Police Officers' Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 503-505.)

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

In cases where courts have assessed whether prevailing-wage statutes conflict with the MMBA, they have been careful to note that voter-enacted restrictions on the collective bargaining process are only appropriate to the extent they leave the governing body a considerable degree of discretion. For example, in *City of Fresno v. People ex rel. Fresno Firefighters, IAFF Local 753* (1999) 71 Cal.App.4th 82, the Court of Appeal upheld a prevailing-wage charter provision because it only set the City's *initial* bargaining position, noting that "[d]ifferent considerations would be involved if the charter section in question actually set wages." Here, Measure F actually sets wages. By setting a fixed formula for setting deputies' salaries every year in perpetuity, it fundamentally changes the parties' bargaining procedure, removing salaries from the scope of bargaining and declaring it non-negotiable. This is clearly inconsistent with the MMBA.

B. THE SECOND CAUSE OF ACTION FAILS

1. <u>Petitioners Failed to Respond to the First Stated Grounds for the County's Demurrer to the Second Cause of Action.</u>

The County demurred to the Second Cause of Action on two grounds. The first is that the Second Cause of Action is entirely derivative of the First Cause of Action, and therefore necessarily fails if the First Cause of Action fails. The Opposition does not appear to dispute that the Second Cause of Action is derivative of the First. Indeed, the Opposition confirms that the Second Cause of Action presupposes that the 1976 ballot initiative is enforceable. (Opposition, p. 19:7-15.) Because the First Cause of Action fails as a matter of law, the Second also fails.

2. <u>To the Extent the Second Cause of Action Attempts to Assert a Constitutional Claim, It Remains Uncertain.</u>

The County also demurred to the Second Cause of Action on the grounds that its statement that the United States and California Constitutions, along with Placer County Code section 3.12.040, "create a clear, present, and ministerial duty under the law" for the County to set deputy sheriffs' compensation according to the Measure F formula, was uncertain. (Demurrer, p. 14.) The Opposition explains that "the Constitution" requires courts to "fashion protections against efforts to nullify the will of the voters" and that this somehow forms a basis for a constitutional cause of action "separate and independent from the requirements of [Elections

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

Code] Section 9125." (Opposition, p. 19.)

This still leaves fatally uncertain the question of what specific cause of action the Petition is attempting to assert, and thus what legal questions the County must address in responding to it. And notably, although the Petition specifically cites to the United States Constitution, the Opposition does not at any point reference any provision of federal law, either constitutional or otherwise. If, as the Petition alleges, there is a federal constitutional claim alleged therein (in which case this matter would be subject to federal jurisdiction and removal to federal court) the County has no way to ascertain what such a claim might be.

C. PETITIONERS FAILED TO OPPOSE THE COUNTY'S DEMURRER TO THE THIRD CAUSE OF ACTION

The County demurred to the Third Cause of Action on the grounds that it is wholly derivative of substantive claims that are invalid as a matter of law. (*Ball v. FleetBoston Fin'l Corp.* (2008) 164 Cal. App. 4th 794, 800.) The Opposition does not respond to this portion of the County's demurrer. Failure to oppose a motion is a constructive concession to the merits of the motion on the grounds set forth in the moving papers. Accordingly, if the Court sustains the County's demurrers to the first and second causes of action – which for the reasons explained above it must – Petitioners' failure to oppose the County's demurrer to the derivative request for declaratory relief must also be sustained.

III. CONCLUSION

For the reasons outlined above and in the County's original filing, the Demurrer to each and every cause of action should be sustained. As explained in the County's original filing, amendment would be futile, and leave to amend should be denied.

Dated: February 24, 2022

LIEBERT CASSIDY WHITMORE

By: _____

Michael D. Youril
Lars T. Reed
Attorneys for Respondent COUNTY OF PLACER

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is: **5250 North Palm Ave, Suite 310, Fresno, California 93704.**

On **February 24, 2022**, I served the foregoing document(s) described as **RESPONDENT COUNTY OF PLACER'S REPLY TO PETITIONERS' OPPOSITION TO RESPONDENT'S DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF** in the manner checked below on all interested parties in this action addressed as follows:

Mr. David E. Mastagni
Taylor Davies-Mahaffey
Mastagni Holstedt, APC
1912 I Street
Sacramento, California 95811
email: davidm@mastagni.com
tdavies-mahaffey@mastagni.com

☑ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Fresno, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☑ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from cdewey@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **February 24, 2022**, at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Constance Dewey

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

Exhibit 15

Michael D. Youril, Bar No. 285591
myouril@lcwlegal.com
Lars T. Reed, Bar No. 318807
lreed@lcwlegal.com
LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704
Telephone: 559.256.7800
Facsimile: 559.449.4535

Attorneys for Respondent COUNTY OF PLACER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO,

Petitioners,

v.

COUNTY OF PLACER,

Respondent.

Case No.: S-CV-0047770

RESPONDENT'S REPLY TO PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO STRIKE

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

I. INTRODUCTION

The County moved to strike various portions of the Petition for the simple reason that – in addition to facts relevant to their causes of action – Petitioners include a large amount of unnecessary factual allegations. The causes of action alleged are that the County violated Elections Code section 9125 by repealing County Code section 3.12.040 and violated that same ordinance by imposing salary increases on DSA members above what the ordinance would provide. These claims ultimately boil down to whether or not Section 3.12.040 reflects a valid and enforceable initiative ordinance. Petitioners' extraneous allegations about bargaining history, failed ballot measures, the parties' motivations, and other topics are neither relevant nor pertinent to Petitioners' causes of action, and serve only to confuse the issues at hand by raising a host of tangential grievances. The arguments in Petitioners' Opposition to the Motion to Strike merely confirm that the disputed allegations are irrelevant to Petitioners' causes of action. This Court should grant the County's motion to strike in its entirety in order to focus the pleadings on the pertinent factual allegations, which will facilitate a prompt adjudication on the merits of the case.

II. ARGUMENT

A. THE COUNTY COMPLIED WITH ITS STATUTORY OBLIGATION TO MEET AND CONFER OVER ITS MOTION TO STRIKE.

The Opposition alleges that the County failed to make a good faith attempt to meet and confer over its motion to strike. Petitioners' discussion is replete with blatant misrepresentations of the parties' meet and confer efforts. For instance, Petitioners describe the telephone call between the parties' counsel on January 12, 2022, as a "very brief conversation." In fact, the phone call lasted just under an hour. (Declaration of Lars Reed in Support of Reply ["Reed Decl."] ¶ 3.) During the nearly hour-long conversation, the parties' counsel engaged in extended discussion regarding the County's concern that each one of the disputed paragraphs were irrelevant to the legal questions raised by the Petition. (Reed Decl. ¶¶ 5-6.) Petitioners' counsel proposed various theories of relevance – the same ones described in the Opposition – and the County's counsel explained why each asserted theory of relevance was unrelated to the causes of action set forth in the Petition. (*Ibid.*) The parties' counsel spoke again on January 28, 2022, after

Petitioners filed their amended petition. (Reed Decl. ¶ 8.) Given that the vast majority of the remaining disputed paragraphs were entirely unchanged, neither party's counsel had anything new to add and the second phone call was significantly shorter. (Reed Decl. ¶¶ 9-10.) Although the parties did not reach an informal resolution, both parties' counsel engaged in a serious effort to discuss the objections, comparing viewpoints, and deliberating. (Reed Decl. ¶ 11.)

B. THE MATERIAL THE COUNTY SEEKS TO STRIKE IS IRRELEVANT.

1. Petitioners' general theories of relevance are inapplicable.

a. Attorneys' fees

The Opposition asserts that each and every challenged paragraph is relevant to a request for attorneys' fees. However, this is not a reason for keeping the disputed allegations *in the pleadings*; a motion for attorney fees is incidental to the cause of action and can rely on evidence outside the merits of the case (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 576-77; *Active Properties, LLC v. Cabrera* (2016) 6 Cal.App.5th Supp. 6, 14-15.). Moreover, the majority of the challenged paragraphs appear to allege a failure to negotiate in good faith, which falls within the exclusive jurisdiction of the Public Employment Relations Board ("PERB"). As stated in paragraph 42 of the Petition, the DSA already has a pending unfair practice charge regarding these issues. The assertion that their irrelevant allegations were included to support a claim for fees thus indicates that Petitioners are improperly conflating their Elections Code claim with their pending UPC in an attempt to get a court order for fees if they cannot get one from PERB.

b. Damages

For each and every challenged paragraph, the Opposition asserts that the disputed allegations are relevant to damages. However, the Opposition never provides any further explanation of *how* these allegations are relevant to the calculation of potential damages; it merely states that they are. Moreover, the Petition itself makes it abundantly clear that Petitioners have in fact suffered no damages at all. The Petition challenges two specific County actions: The repeal of an ordinance, which does not by itself have any direct effect on compensation; and the imposition of salary raises that *exceed* what the ordinance would have allowed. (See Petition, Exhibits H and J.) In other words, according to the Petition, the challenged County actions have

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

resulted in Petitioner Frederito and other deputies represented by the DSA receiving *more* money, not less. Moreover, several of the challenged paragraphs relate *solely* to compensation setting for County employees not represented by Petitioners, and thus have no conceivable relevance to any potential award of damages to Petitioners.

c. "Credibility determinations"

The Opposition asserts for a number of the challenged paragraphs that the disputed allegations are relevant to "credibility determinations." As stated in the County's Motion to Strike, this case presents a handful of questions of law: Whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040 in September of 2021, and whether the County had legal authority to subsequently impose pay raises greater than the Measure F salary formula would provide. All of these are questions of law that can be resolved on the basis of undisputed facts subject to judicial notice. Accordingly, no party's credibility is at issue in this case, and vague references to "credibility determinations" is insufficient to establish that the challenged paragraphs have any relevance to Petitioners' causes of action.

2. <u>The specific theories of relevance for each disputed paragraph are all unrelated to the causes of action raised in the Petition.</u>

a. Paragraphs 12, 14, 15

The Opposition states that Paragraphs 12, 14, and 15, which concern failed ballot measures attempting to repeal Placer County Code section 3.12.040 in 2002 and 2006 – which the County put on the ballot at the DSA's request (See Petition, Exhibits A and C, as corrected by Petitioners' Notice of Errata filed February 17, 2022) – "are relevant to the County's claim that Measure F was eliminated by enactment of the Charter" and are relevant to establishing that Measure F could not be repealed without voter approval. The Opposition also states that the County's request for judicial notice regarding the results of the 1976 and 1980 elections are a "tacit admission that the facts set forth in the Petition are relevant." These assertions are bordering on nonsensical.

As a matter of law, a *failed* ballot measure has no legal effect whatsoever, and thus could

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

not possibly be relevant to determining whether the County had authority to repeal Section 3.12.040 without submitting the question to the voters. The County requested judicial notice of two ballot measures that *actually passed*: Measure F, which is the subject of the lawsuit, and the County Charter, which forms one of the grounds for the County's demurrer and defense. While the County does not dispute that the 2002 and 2006 elections are subject to judicial notice, the County vigorously disputes their relevance as stated above. These allegations also have no conceivable relevance to the amount of any potential damages.

b. Paragraphs 10, 11, 13, 30, and 38-41

The Opposition states that Paragraphs 10, 11, 13, 30, and 38-41, which contain allegations about representations and public statements allegedly made by County representatives, are relevant "evidence of voter intent when voting for or against Measure F." Given that none of the alleged statements took place prior to the 1976 election, when voters actually voted on Measure F, the County assumes the Petitioners are referring to voter intent when voting for or against the failed repeal efforts. But again, given that the repeal efforts failed and have no legal effect whatsoever, the voters' intent is similarly irrelevant to anything.

Petitioners also claim that these paragraphs are "relevant to show that between 1980 and 2003 county officials have construed [County Code Section] 3.12.040 as compatible with the Charter." The only possible relevance to how County officials have construed or represented Measure F in the past is as an argument that prior representations (or misrepresentations), now estop the County from asserting the legal position that Measure F is void and superseded by the County Charter. That argument fails as a matter of law: mistaken statements about a legal proposition cannot create an estoppel, and estoppel may not be invoked to contravene constitutional or statutory limitations. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1315; *Longshore v. County of Ventura* (1979) 25 Cal. 3d 14, 28.)

For these reasons, these paragraphs are irrelevant to Petitioners' causes of action. They also have no conceivable relevance to the amount of any potential damages.

///

///

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

c. Paragraph 16

The Opposition states that Paragraph 16 is relevant to establishing "the DSA's position as it relates to collective bargaining regarding Measure F and section 3.12.040" and that it is relevant "that the County only construed Measure F as in conflict with the Charter when the DSA would not submit to the County's demands that the DSA subvert the will of Placer County voters." None of this is relevant to the Petitioners' causes of action. Whether Measure F was a valid ballot initiative is a question of law; whether the County had the authority to repeal the County ordinance containing Measure F's salary formula is a question of law; whether the County had legal authority to impose pay raises greater than that salary formula is a question of law. Neither the DSA's bargaining position nor the timing of when the County first raised the issue that the Charter and Measure F were incompatible are relevant to a determination of any one of those questions. They also have no conceivable relevance to the amount of any potential damages.

d. Paragraphs 17-19 and 21

The Opposition states that Paragraphs 17-19 and 21, which contain allegations of the parties' past practice of working around the restrictions of Measure F without ever addressing the issue of whether those restrictions were legally valid, are relevant to showing that "the parties interpreted Measure F in a consistent manner and shows a course of conduct of both parties regarding their understanding of Measure F." Unless this is asserting an estoppel argument – which would fail as a matter of law for the reasons set forth above – there is no conceivable way this is relevant to determining whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040, or whether the County had legal authority to impose pay raises greater than the Measure F salary formula.

The Opposition also states that these paragraphs are relevant to "credibility determinations, including the position of the parties in collective bargaining over time." As stated above, Petitioners' causes of action raise only legal questions that can be adjudicated on the basis of undisputed facts subject to judicial notice; No party's credibility is at issue in this case. These allegations also have no conceivable relevance to the amount of any potential damages.

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

e. Paragraph 20

The Opposition states that Paragraph 20, which concerns a prior amendment to County Code section 3.12.040 that did not affect the salary-setting formula for deputy sheriffs is relevant on the grounds that "were section 3.12.040 negated by the Charter, the County would have no need to amend the code section." This assertion is more nonsense. The County's position is that Measure F (the ballot initiative) was superseded by the County Charter, and that Placer County Code section 3.12.040 (an ordinance mirroring its terms) was therefore a normal County ordinance subject to repeal or amendment without voter approval. Accordingly, the County's prior – and unchallenged – amendment of that ordinance is not relevant to determining whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040, or whether the County had legal authority to impose pay raises greater than the Measure F salary formula. This paragraph also has no conceivable relevance to the amount of any potential damages, particularly given that it does not relate to compensation for DSA members generally or Petitioner Frederito specifically.

f. Paragraphs 22 and 23

The Opposition asserts that Paragraphs 22 and 23, which consist of unsupported speculation regarding the county's motives for repealing Section 3.12.040 and the County's legal position regarding its authority to do so are relevant because "allegations made upon information and belief are decidedly appropriate at the complaint stage" and that they are relevant to "whether the County knew it did not have the legal authority to repeal Measure F unilaterally." The County does not dispute that allegations made upon information and belief are appropriate *when relevant*; however, whether (or when) the County "knew" or believed anything about its authority to repeal Section 3.12.040 or lack thereof is entirely irrelevant to the Petitioners' causes of action. The Petition raises the legal questions whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040, and whether the County had legal authority to impose pay raises greater than the Measure F salary formula. All of these are questions of law that can be

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

resolved on the basis of undisputed facts subject to judicial notice; neither party's knowledge or motives are in any way pertinent to a determination of these questions. These allegations also have no conceivable relevance to the amount of any potential damages.

g. Paragraph 24

The Opposition asserts that Paragraph 24, which concerns the County's policy for determining compensation for members of the County Board of Supervisors, using a similar formula to the one specified in Measure F, "is relevant to show the County's position on the legality of Measure F over time." This assertion is yet more nonsense. No party to this case has ever made the argument that Measure F's salary formula in and of itself is unlawful; the question at hand is whether a ballot initiative can *force* the County to utilize that formula and force *both* parties to forgo negotiations over compensation. Given that there is no allegation that the County is *required* to use this formula for members of the County Board of Supervisors, and given that Supervisors have no collective bargaining rights under the Meyers-Milias-Brown Act or any other law, the County's use of this or any other salary setting formula for Supervisors has no conceivable relevance to the legal questions at hand: whether Measure F was a valid ballot initiative in 1976, whether it was legally superseded by the County Charter, whether the County had legal authority to repeal County Code section 3.12.040, and whether the County had legal authority to impose pay raises for deputy sheriffs greater than the Measure F salary formula. This paragraph also has no conceivable relevance to the amount of any potential damages, particularly given that it relates solely to compensation for members of the Board of Supervisors.

h. Paragraphs 25-34, 47-48, and 52-53

The Opposition states that Paragraphs 25-34, 47-48, and 52-53, which concern the party's collective bargaining from 2018 through a declaration of impasse, are "relevant because they demonstrate the County's position upon which Petitioners relied during collective bargaining and negotiations." But the parties' conduct during collective bargaining, including the extent to which the Petitioners may have relied on the County's statements about its own position, are equally irrelevant to Petitioners' causes of action. It appears the Petitioners are attempting to raise allegations of bad faith bargaining conduct, which are not relevant to a determination of the

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

alleged violation of Elections Code 9125, and which would fall under the exclusive initial jurisdiction of the Public Employment Relations Board. Accordingly, these allegations are improper and should be stricken.

The Opposition also states these paragraphs are "relevant to the amount of discretion the Board of Supervisors retains over setting compensation." This statement is inconsistent with the core of the Petitioners' second cause of action, which asserts that the County had no discretion whatsoever to deviate from Measure F's salary-setting formula. The extent to which the County may have had discretion to provide benefits other than salary is irrelevant to the determination of whether Measure F's prescriptive formula for setting salaries was constitutionally invalid when the voters approved it in 1976, or whether it was superseded by the County Charter in 1980, and is therefore irrelevant to whether the County had legal authority to amend Section 3.12.040 in 2021 or to subsequently impose pay raises greater than what Measure F would allow. These allegations also have no conceivable relevance to the amount of any potential damages.

i. Paragraphs 35-37 and 58-63

The Opposition states that Paragraphs 35-37 and 58-63, which concern a statutory factfinding proceeding the parties participated in, is "inherently relevant to the dispute as the factfinding process thoroughly developed the background of the dispute, and examined the legal positions of both parties" and that the factfinding report is judicially noticeable. But given that a factfinding report issued pursuant to the MMBA is advisory only (Gov. Code, § 3505.5) the report's "examination" of the parties' legal positions has no legal significance and is due no deference from this Court. And once again, the actual causes of action raised in the Petition are purely legal questions that can be adjudicated based on undisputed facts are subject to judicial notice. As such, allegations regarding the factfinding process and report are irrelevant to a judicial determination of whether the County had authority to amend County Code Section 3.12.040 or to impose salary increases greater than the Measure F formula would provide. These allegations also have no conceivable relevance to the amount of any potential damages.

///

///

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

j. Paragraphs 42-45

The Opposition states that Paragraphs 42-45, which concern the DSA's unfair labor practice charge currently pending before PERB, are relevant "because they demonstrate the County's position upon which Petitioners relied during collective bargaining and negotiations." But again, unless the DSA is asserting an estoppel argument (which fails as a matter of law because the County cannot be estopped from asserting a legal position with respect to constitutional or statutory law) or a claim of bad faith bargaining (which is subject to the exclusive initial jurisdiction of PERB) the County's stated position and any reliance the Petitioners may have had on such statements are simply not relevant. The actual causes of action in the Petition raise only purely legal questions that can be adjudicated on the basis of a small set of undisputed facts that are subject to judicial notice. These allegations also have no conceivable relevance to the amount of any potential damages.

k. Paragraphs 46 and 49-50

Paragraphs 46 and 49-50 consist of unsupported speculation about the County's motives for making negotiation proposals. The Opposition asserts that "[t]he County's motives for its repeatedly changing position on the legality and validity of Measure F are relevant to demonstrate the County's position over time, and to assist the Court in making credibility determinations." But once again, the County's position over time is irrelevant: Whether the County in fact had authority to amend Section 3.12.040 in September 2021 is a question of law, as is whether the County had authority to impose pay raises greater than what Measure F would provide. And these legal questions can be determined entirely from undisputed facts subject to judicial notice, so no party's credibility is at issue or in any way relevant. These allegations also have no conceivable relevance to the amount of any potential damages.

l. Paragraph 51

The Opposition states that Paragraph 51, which concerns the County's negotiations with another bargaining unit and subsequent implementation of salary changes for that bargaining unit, is relevant because "[t]he impact that the County's meandering position on Measure F has on collective bargaining units within the County is the precise subject matter of this dispute." This

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

statement is telling, as the Petitioners are clearly describing an allegation that the County's actions constituted a failure to negotiate in good faith, which would fall within PERB's exclusive initial jurisdiction. The actual subject matter of *this dispute* is whether the County's amendment of County Code section 3.12.040 violated Elections Code section 9125, or whether the County had the authority to subsequently impose a greater salary increase than the Measure F formula would provide. This paragraph also has no conceivable relevance to the amount of any potential damages, given that it relates solely to salary changes for another bargaining unit.

m. Paragraphs 54-57

The Opposition states that Paragraphs 54-57, which concern the County's attempts to meet and confer over the proposed repeal of Section 3.12.040, "are relevant because they demonstrate the County's position upon which Petitioners relied during collective bargaining and negotiations" and that they are "relevant to credibility determinations." Once again, unless the DSA is asserting an estoppel argument (which fails as a matter of law because the County cannot be estopped from asserting a legal position with respect to constitutional or statutory law) or a claim of bad faith bargaining (which is subject to the exclusive initial jurisdiction of PERB) the County's stated position and any reliance the Petitioners may have had on such statements are simply not relevant. The actual causes of action in the Petition raise only purely legal questions that can be adjudicated on the basis of a small set of undisputed facts that are subject to judicial notice, such that no party's credibility is actually at issue. These allegations also have no conceivable relevance to the amount of any potential damages.

III. CONCLUSION

For the foregoing reasons, this Court should grant in its entirety Respondent's Motion to Strike Portions of the Petition, without leave to amend.

Dated: February 24, 2022

LIEBERT CASSIDY WHITMORE

By: _____

Michael D. Youril
Lars T. Reed
Attorneys for Respondent COUNTY OF PLACER

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is: **5250 North Palm Ave, Suite 310, Fresno, California 93704.**

On **February 24, 2022**, I served the foregoing document(s) described as **RESPONDENT'S REPLY TO PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE** in the manner checked below on all interested parties in this action addressed as follows:

Mr. David E. Mastagni
Taylor Davies-Mahaffey
Mastagni Holstedt, APC
1912 I Street
Sacramento, California 95811
email: davidm@mastagni.com
tdavies-mahaffey@mastagni.com

☑ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Fresno, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☑ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from cdewey@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **February 24, 2022**, at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Constance Dewey

Exhibit 16

Michael D. Youril, Bar No. 285591
myouril@lcwlegal.com
Lars T. Reed, Bar No. 318807
lreed@lcwlegal.com
LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704
Telephone: 559.256.7800
Facsimile: 559.449.4535

Attorneys for Respondent COUNTY OF PLACER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO, Petitioners, v. COUNTY OF PLACER, Respondent.	Case No.: S-CV-0047770 Complaint Filed: December 21, 2021 **DECLARATION OF LARS REED IN SUPPORT OF RESPONDENT'S REPLY TO PETITIONERS' OPPOSITION TO MOTION TO STRIKE** Date: March 3, 2022 Time: 8:30 a.m. Dept.: 42 **(*Exempt from filing fees pursuant to Gov. Code, § 6103.)**

I, Lars T. Reed, declare as follows:

1. I am duly licensed to practice law in the State of California. I am an attorney with the law firm of Liebert Cassidy Whitmore ("LCW"), counsel of record in the above-captioned matter for Respondent COUNTY OF PLACER ("Respondent" or "County"), along with Michael D. Youril. This declaration is submitted in support of Respondent's Reply to Petitioner's Opposition to Motion to Strike the Verified Petition for Writ of Mandate and Complaint for Declaratory Relief ("Original Petition") filed by Petitioners Placer County Deputy Sheriff's Association and Noah Frederito (collectively, "Petitioners"), and supplements my prior declaration in support of the County's Demurrer, filed February 2, 2022. The following facts are

within my personal knowledge and, if called as a witness herein, I can and will testify competently thereto.

2. Petitioners filed the Original Petition on December 21, 2021, and I am informed that it was served on Respondent on January 4, 2022.

3. On January 12, 2022, Michael Youril and I participated in a teleconference with David E. Mastagni and Taylor Davies-Mahaffey of the law firm Mastagni Holstedt, counsel for Petitioners, to meet and confer regarding Respondent's intent to file a demurrer and motion to strike in response to the Original Petition, pursuant to the requirements of Code of Civil Procedure section 430.41(a), and Placer County Local Rule 20.2.1. This phone call lasted nearly one hour.

4. During the call, in addition to a discussion regarding the grounds for the County's demurrer, counsel discussed the County's proposed motion to strike. Mr. Youril and I explained the County's position that a substantial portion of the allegations in the Petition are entirely irrelevant to determining the legal questions underlying the specific causes of action asserted in the Petition.

5. Mr. Mastagni indicated that he believes everything alleged in the Petition is relevant, and asserted several proposed theories of relevance. These included that the disputed allegations were relevant to claims for attorneys' fees and damages, that the disputed allegations were relevant to showing a pattern of bad-faith conduct, that the disputed allegations were relevant to showing that the parties had operated within the restrictions of Measure F for decades, and that the disputed allegations were relevant to showing that the County's prior representations about the legal effect and status of Measure F were inconsistent.

6. Although counsel did not discuss each disputed paragraph individually, we nonetheless discussed each of the proposed theories of relevance. Mr. Youril and I explained that none of the proposed theories of relevance were actually pertinent to the causes of action asserted in the Petition.

7. On January 21, 2022, Petitioners filed an Amended Petition for Writ of Mandate and Complaint for Declaratory Relief ("Amended Petition"), which our office received by e-mail

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

service the same day. The Amended Petition omitted several of the disputed paragraphs, but the vast majority remained unchanged.

8. On January 28, 2022, Mr. Youril and I participated in a second teleconference with Mr. Mastagni and Ms. Davies-Mahaffey to meet and confer over the County's proposed demurrer and motion to strike portions of the Amended Petition.

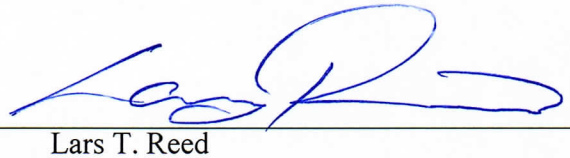
9. During the call, Mr. Youril and I explained that although the Amended Petition omitted some of the allegations the County objected to in the Original Petition, the majority of the allegations the County sought to strike still remained. We explained that the County still maintained that the challenged sections were legally irrelevant with no probative value to the legal issues raised by the Petition, and so the County still intended to file a motion to strike. Mr. Mastagni explained that Petitioners maintain that the Petition states a valid cause of action, and that the challenged sections are relevant.

10. Because the remaining challenged allegations were essentially unchanged, neither party's counsel had anything new to add to the discussion, and so the second phone call was significantly shorter than the first.

11. Through the course of meeting and conferring, both parties' counsel engaged in a serious effort to discuss the County's objections, comparing viewpoints, and deliberating, but the parties were not able to reach an agreement resolving Respondent's objections to the Amended Petition. Mr. Mastagni indicated that he had no intention to further amend the Petition in response to Respondent's objections.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 24th day of February 2022, at Woodland, California.



Lars T. Reed

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is: **5250 North Palm Ave, Suite 310, Fresno, California 93704.**

On **February 24, 2022**, I served the foregoing document(s) described as **DECLARATION OF LARS REED IN SUPPORT OF RESPONDENT'S REPLY TO PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO STRIKE** in the manner checked below on all interested parties in this action addressed as follows:

Mr. David E. Mastagni
Taylor Davies-Mahaffey
Mastagni Holstedt, APC
1912 I Street
Sacramento, California 95811
email: davidm@mastagni.com
tdavies-mahaffey@mastagni.com

☑ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Fresno, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☑ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from cdewey@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **February 24, 2022**, at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Constance Dewey

Liebert Cassidy Whitmore
A Professional Law Corporation
5250 North Palm Ave, Suite 310
Fresno, California 93704

Exhibit 17

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE MICHAEL W. JONES
TENTATIVE RULINGS FOR MARCH 3, 2022 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, MARCH 3, 2022 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, MARCH 2, 2022**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT EMERGENCY LOCAL RULE 10.28.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

1. M-CV-0078470 MORENO, PAUL v. CENTRAL VALLEY ENG

The motion for summary judgment is continued to Thursday, April 14, 2022 at 8:30 a.m. in Department 42.

2. M-CV-0079528 BANK OF AMERICA v. POZZI, MICHAEL

Plaintiff's Motion for Judgment on the Pleadings

Plaintiff's motion for judgment on the pleadings is granted.

The court may grant a motion for judgment on the pleadings in favor of a plaintiff where the complaint states facts sufficient to constitute a cause of action, and the answer does not state facts sufficient to constitute a defense to the complaint. (Code Civ. Proc., § 438, subd. (c)(1)(A).) The grounds for the motion must appear on the face of the challenged pleading, or be based on facts which the court may judicially notice. (*Id.* subd. (d).) The court may take judicial

notice of a defendant's uncontroverted admissions in responses to request for admissions or interrogatories. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2d Dist. 2010) 181 Cal.App.4th 471, 485; *see also Evans v. California Trailer Court, Inc.* (5th Dist. 1994) 28 Cal.App.4th 540, 549, disapproved on other grounds in *Black Sky Capital LLC v. Cobb* (2019) 7 Cal.5th 156.)

The court takes judicial notice of its order deeming plaintiff's requests for admissions, set one, admitted. Pursuant to the court's order, defendant is deemed to have admitted all operative facts alleged in the complaint, including defendant's liability. Judgment on the pleadings is appropriate in these circumstances. (Code Civ. Proc., § 438, subd. (c)(1)(A).) Judgment shall be entered in favor of plaintiff and against defendant in the principal amount of $9,061.41 and costs in the amount of $448.95.

3. M-CV-0079958 CITIBANK v. METCALF, JAMES

Plaintiff's motion to deem admitted the requests for admission, set one, is granted. The matters set forth in plaintiff's requests for admissions, set one, are deemed admitted by defendant James Metcalf.

Sanctions are not ordered as no such request is stated in the notice of motion. (Code Civ. Proc., § 2023.040.)

4. S-CV-0043334 ABBOUSHI, JAMAL v. CASURANCE AGENCY INS

The motion for judgment on the pleadings is continued to Thursday, April 14, 2022 at 8:30 a.m. in Department 42.

5. S-CV-0043539 HENDERSON, JOHN v. NAU, PAUL

Plaintiff's Motion for Amended Judgment

The motion is granted. The judgment is amended to reflect defendant's full name of Paul E. Nau, Jr. Further the judgment is amended to add additional defendants Paul E. Nau Jr. Revocable Trust, Paul E. Nau Jr. Revokable Trust, and Paul Nau Jr. Trustee as the alter egos of the original judgment debtor Paul Nau. (Code of Civil Procedure section 187.)

///

6. S-CV-0043710 STANDARD INS CO v. TEFERA, DAVID

The motion to dismiss is continued to Tuesday, March 15, 2022 at 8:30 a.m. in Department 40 to be heard by Commissioner Trisha J. Hirashima.

7. S-CV-0043900 VINCENT, DAVID v. COLDWELL SOLAR

The reserved hearing date for the motion for summary judgment is dropped from the calendar. A notice of dismissal was entered on December 30, 2021.

8. S-CV-0046468 HOMEWOOD CAMP v. BACK TO HOMEWOOD

Defendants' Motion to Expunge Lis Pendens

Preliminary Matter

As an initial matter, the court shall exercise its discretion to consider any memorandum that exceeds the normal page limitations. Nonetheless, the parties are advised that this practice will not be tolerated in the future and the parties will be required to seek leave prior to the filing of any memorandum of excessive length.

Ruling on Objection

The court overrules defendants' objection no. 1.

Ruling on Motion

The motion is granted and defendants are awarded $18,060.00 in attorneys' fees.

In the current request, defendants seek to expunge the lis pendens notice filed by plaintiffs on April 6, 2021 along with the related recorded document. The expungement of a lis pendens involves a two prong analysis. The first prong involves a review of the complaint to determine whether a real property claim is involved. (Code of Civil Procedure section 405.32; *Urez Corporation v. Superior Court* (1987) 190 Cal.App.3d 1141, 1149.) The second prong involves an examination of the probable validity of the real property claim. (Code of Civil Procedure section 405.32; *Howard S. Wright Construction Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 319.) It is the party opposing expungement

who must prove both prongs with the probable validity prong established through a preponderance of the evidence. (*Ibid*.)

Here, a review of the second amended complaint shows plaintiffs allege breach of fiduciary duty and fraudulent transfer claims against the defendants. The relief here primarily seeks creation of a constructive trust to prevent further transfer or conveyance of the property along with disgorgement of any profits. The predominant claim asserted by plaintiffs is a real property claim, which satisfies the first prong of the analysis.

Next, the real property claim must be reviewed to determine the probable validity of the claim. All three of plaintiffs' causes of action substantially rely upon the same set of factual allegations. Namely, that defendants misrepresented the stream environmental zone [SEZ] on Lot 79, claiming it could not be developed; defendants failed to disclose Michael Oliver's plan to develop Lot 79; defendants failed to disclose that Nora Kelemen would act on Mr. Oliver's behalf to purchase Lot 79; and this failure to disclose was done to prevent plaintiffs from placing an offer on Lot 79, which included the failure to submit their offer prior to the close of escrow on Lot 79.

Plaintiffs' submitted evidence, however, does not establish a probable validity they will prevail on their real property claim. The evidence tends to show there was a dispute over the ability to develop Lot 79 rather than an express statement that the lot could not be developed. (Hartshorne declaration ¶¶6, 11, 12, 15, 16; Ogilvy declaration ¶¶4-8; Vicknair declaration ¶9; Defendants' AOE, Exhibit E.) Moreover, the evidence shows defendants Oliver and Kelemen began inquiries into Lot 79 after plaintiffs had purchased the 5020 West Lake Boulevard property. (see generally Mark Herthel declaration; Exhibits to Welkom declaration; Defendants' AOE, Exhibits G-V, BB-NN.) The evidence also tends to show that while plaintiffs made some inquiries regarding Lot 79, they were either in passing or had no follow through by plaintiffs. (Defendants' AOE, Exhibits E, PP-QQ.) It was in May 23, 2020 and May 28, 2020 that plaintiffs actually made an offer to purchase Lot 79. (Defendants' AOE Exhibit RR, Mark Herthel declaration, Exhibit G.) This was after escrow had already closed and the grant deed had been issued to defendants. (Kelemen declaration ¶5, Defendants' AOE, Exhibit NN.) In light of this evidence, plaintiffs have not established by a preponderance of the evidence that they will prevail on their real property claim.

The notice of lis pendens filed on April 6, 2021 and the corresponding recorded document are expunged.

The prevailing party in any motion to expunge lis pendens is entitled to cover attorney's fees and costs. (Code of Civil Procedure section 405.38.) Defendants are the prevailing party as their motion is successful, entitling them to an attorney's fees and costs award. The court has carefully reviewed the declaration of John Fairbrook and determines the 45 hours in legal services provided for this motion are reasonable. The hourly rate, however, needs to be reduced to better reflect the rate charged within Placer County. The hourly rate is reduced to $400 per hour. Defendants are awarded $18,000 in attorney's fees and the $60 motion fee for a total award of $18,060.

Motion to Compel Discovery

The motion is continued to Thursday, March 24, 2022 at 8:30 a.m. in Department 42.

It is noted both motions to compel were initially dropped from calendar. However, further review of the court file revealed there were actually two separate discovery motions set for March 3, 2022 with plaintiff only dropping the motion filed on January 26, 2022. The second motion to compel discovery filed on January 31, 2022 was not dropped by the moving party.

9. S-CV-0047426 DOE 7016, JOHN v. ROSEVILLE CSD

The demurrer is continued to Thursday, April 7, 2022 at 8:30 a.m. in Department 42.

10. S-CV-0047684 TRIMONT LAND CO v. NORTHSTAR VILLAGE ASSOC

Defendant Northstar Village Association's [NVA's] Demurrer to the Complaint

The demurrer is overruled. In the current challenge, defendant NVA asserts plaintiff Trimont Land Company [Trimont] lacks standing to bring this action since Trimont is not an owner of property within the association. A demurrer is reviewed under well-established principles. The challenge here tests the legal sufficiency of the pleading, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) In this vein, the allegations in the pleading are deemed to be true no matter

how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

A review of the complaint shows that the allegations within it are sufficient to plead standing at this initial stage of the litigation. Specifically, Trimont alleges in paragraph 4 that it is a commercial units owner within the owners' association along with being the mountain operator. (Complaint ¶4.) The complaint must be liberally construed with all inferences drawn in favor of plaintiff. (Code of Civil Procedure section 452; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7; *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.) The court must accept these allegations to be true at this juncture. In light of this, the demurrer is overruled in its entirety.

Any answer or general denial shall be filed and served by March 18, 2022.

11. S-CV-0047732 NORTHSTAR VILLAGE ASSOC v. CLP NORTHSTAR

Defendants' Demurrer to the Complaint

Ruling on Requests for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Plaintiff's request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is sustained in part. A demurrer is reviewed under well-established principles. The challenge tests the legal sufficiency of the pleading, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) In this vein, the allegations in the pleading are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The demurrer is reviewed keeping this in mind.

A review of the allegations within the complaint, when read as a whole and with the judicially noticeable documents, show they are sufficient to plead the claims alleged in the first and second causes of action.

The allegations within the fifth, sixth, and seventh causes of action are also sufficiently pleaded as defendants' challenge here is more properly brought through the filing of a motion to strike rather than a demurrer.

The demurrer is sustained, with leave to amend, as to the third cause of action. The allegations within this nuisance claim focus upon the gondola allegedly being built in violation of the CUP, which tends to invoke permanent nuisance rather than a continuing nuisance. A permanent nuisance involves a permanent injury that comes into effect when an act of injury is done, completing the nuisance when it comes into existence. (*Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1143, superseded by statute on other grounds in *Rufini v. CitiMortgage, Inc.* (2014) 227 Cal.App.4th 299, 311.) This type of nuisance has a three year statute of limitations that begins after the permanent nuisance is erected. (*Id*. at pp. 1144-1145.) The allegations within the complaint alleging the CUP arose from the 2004 certified EIR. From this date, the statute of limitations expired in 2007. A review of the judicially noticeable documents suggest the gondola was fully installed in 2010, which only extends the statute of limitations to 2013. The allegations as currently pleaded in the third cause of action, even when read in conjunction with the judicially noticeable documents, appear to be barred by the statute of limitations.

The first amended complaint shall be filed and served by March 25, 2022.

A civil trial conference is set for May 16, 2022 at 2:00 p.m. in Department 40.

12. S-CV-0047770 PLACER CO DEPUTY SHERIFFS' ASSN v. PLACER CO

The demurrer and motion to strike are continued to Thursday, March 24, 2022 at 8:30 a.m. in Department 42.

13. S-CV-0047918 IMO ROUSCH, WENDY

Petition for Approval of Minor's Claim for Taylor Rousch

The petition is continued to March 17, 2022 at 8:30 a.m. in Department 42. The petition is incomplete as it does not include Attachment 18b(2), to inform the court of the name, branch, and address of the depository where the funds will be deposited. The matter is continued to afford petitioner an opportunity to submit this information. Any supplemental filing shall be filed and served by 12:00

p.m. on March 10, 2022. If oral argument is request, the appearance of the minor at the hearing is waived.

Exhibit 18

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE MICHAEL W. JONES
TENTATIVE RULINGS FOR MARCH 24, 2022 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, MARCH 24, 2022 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, MARCH 23, 2022**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT EMERGENCY LOCAL RULE 10.28.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

1. M-CV-0080572 BRAR, JASBIR v. BLAYLOCK, JOSEPH

The motion to reschedule hearing is continued to April 14, 2022 at 8:30 a.m. in Department 42.

2. M-CV-0080600 NYBERG, MICHELE v. HARMONING, ADAM

The motion to compel discovery responses is continued to Tuesday, March 29, 2022 at 8:30 a.m. in Department 40 to be heard by Commissioner Trisha J. Hirashima.

3. M-CV-0080868 OSBORNE, MICHAEL v. LEAIRD, JASON

Defendant's Motion to Set Aside Default and Default Judgment

There is no proof of service in the court's file demonstrating proper and timely service of the order on ex parte application for stay or defendant's motion to set

aside default. On March 15, 2022, the court ordered defendant to serve plaintiff's counsel no later than 5:00 p.m. on March 16, 2022 by personal service, electronic service, or facsimile. The court further ordered defendant to file proof of service with the court at least five days before the March 24th hearing. Appearance is required on **March 24, 2022 at 8:30 a.m. in Department 42**. Defendant is directed to bring a file-endorsed copy of proof of service of both the order for stay and the motion to set aside default.

4. S-CV-0037566 STEUBER, VIRGIL v. JOHN MOURIER CONST

Cross-Defendant Atlas Specialties Corporation's Motion for Determination of Good Faith Settlement

The motion is granted as prayed. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

5. S-CV-0039958 BANK OF HOPE v. PARK, SUNGMIN

Defendant Trustee Sungmin Park's Motion to Compel Further Responses from Bank of Hope for Request for Admissions and Sanctions

The motion is granted. Plaintiff Bank of Hope shall provide further verified responses, without further objections, to request for admissions, set one, nos. 21, 22, 56, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 75, 76, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 97, 98, 99, 100, 104, 105, 106, 107, 108, 109, 110, 114, 116, 117, 118, 119, 120, 126, 127, 128, 129, 130, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 210, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 226, 236, 238, 239, 240, 241, 242, 243, 244, 246, 258, and request for genuineness of documents nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 41 within 10 days of service of the signed order after hearing.

Sanctions in the amount of $3,094.00 are imposed upon plaintiff Bank of Hope.
///

Defendant Trustee Sungmin Park's Motion to Compel Further Responses from Bank of Hope for Request for Production of Documents and Sanctions

The motion is granted. Plaintiff Bank of Hope shall provide further verified responses and responsive documents, without further objections, to request for production of documents, set one, nos. 1-183 within 10 days of service of the signed order after hearing. Sanctions in the amount of $2,812.00 are imposed upon plaintiff Bank of Hope.

6. S-CV-0042658 LABEL, PATRICK v. BENTON, LORENZA

Defendant Lorenza Benton's Motion for Leave to Amend Responses to Plaintiff's Request for Admissions

The motion is granted. Defendant is afforded leave to amend his verified response to plaintiff's request for admissions, set two, no. 29. The verified amendment to no. 29 shall be provided to plaintiff within 10 days of service of the signed order after hearing.

7. S-CV-0045232 DEVINE, MAUREEN v. SUN CITY LINCOLN HILLS

Defendant's Motion for Summary Judgment

The motion is denied. In the current challenge, defendant seeks summary judgment as to the entirety of the claims alleged in plaintiffs' complaint. A summary judgment motion is reviewed under well-established principles. The moving party bears the initial burden of establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (Id. at 437c(p)(2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (Ibid.) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The court reviews the motion keeping this in mind.

Plaintiffs allege negligence and loss of consortium arising from a fall plaintiff Maureen Devine suffered when walking on a trail where two water hoses ran across the trail, asserting these hoses amounted to a dangerous condition. A landowner or possessor of land has a duty to take reasonable measures to protect

persons from dangerous conditions on the property. (see *Alpert v. Villa Romano Homeowners Assn*. (2000) 81 Cal.App.4th 1320, 1334–35.) Even where the hazard is obvious and no warning is necessary, the landowner or possessor still has a duty to remedy the hazard where knowledge alone is inadequate to prevent injury. (*Kinsman v. Unocal Corporation* (2005) 37 Cal.4th 659, 673.) This is true where weighing the practical necessity of encountering the danger against the apparent risk posed by the danger may have a person choose to encounter the danger. (*Ibid.*)

It is undisputed that two blue hoses laid across the Ferrari Pond Trial. (Plaintiffs' SSUMF Nos. 11, 12.) These hoses would cause a wet area around the walking trail. (Id. at No. 9.) The hoses also generally required a pedestrian to slow down and take a large step to traverse both hoses. (Id. at No. 12.) This evidence tends to show there was an open, dangerous condition on the trail. Contrary to defendant's arguments, the submitted evidence does not establish that a reasonable pedestrian would merely turn around to avoid the hoses. To the contrary, the submitted evidence tends to support that a pedestrian would reasonably choose to confront the danger on the trail. Defendant does not submit sufficient evidence to address what maintenance or other steps were taken in order to remedy the danger caused by the blue hoses obstructing normal travel over the trail. In light of this, defendant has not met its initial burden and the motion is denied.

8. S-CV-0045656 ALONGI, RACHELLE v. FIVE STAR BANK

The demurrer is continued to Thursday, April 14, 2022 at 8:30 a.m. in Department 42.

9. S-CV-0045722 POLILO, JOSPEH v. EATON, ISABELLA

The motion to enforce settlement is dropped from the calendar at the request of the moving party.

10. S-CV-0045804 NUNO, MELISSA v. PAN AMERICAN GRP

The motion to compel arbitration is continued to Thursday, April 14, 2022 at 8:30 a.m. in Department 42.

///

11. S-CV-0046468 HOMEWOOD CAMP v. BACK TO HOMEWOOD

Plaintiffs' Motion to Compel Further Responses to Request for Production of Documents and Sanctions

The motion is granted in part.

Defendant Oliver Luxury Real Estate shall provide further verified responses and responsive documents, without further objections, to request for production of documents nos. 1, 2, 6, 7, 8, 37, 38, 43, 49-53, 55, and 56 within 10 days of service of the signed order after hearing.

Defendant Michael Oliver shall provide further verified responses and responsive documents, without further objections, to request for production of documents nos. 49-53, 55, and 56 within 10 days of service of the signed order after hearing.

Defendant Darin Vicknair shall provide further verified responses and responsive documents, without further objections, to request for production of documents nos. 48-52, 54, and 55 within 10 days of service of the signed order after hearing.

The court declines to expressly order defendants to produce privilege logs or enter into protective orders. The parties should be able to engage in meet and confer efforts to resolve these matters.

The court declines to order sanctions. A review of the declarations show plaintiff could have been more diligent during the meet and confer process. The court is also concerned that discussion during the purported meet and confer appeared more like ultimatums rather than good faith attempts to resolve the matter. In light of this, the court finds substantial justification for defendants' actions and will not order sanctions at this time.

12. S-CV-0046755 MARR, CALVIN v. PALMER, WILLIAM

Case Management Conference

The appearances of the parties are required for the case management conference. The parties should be prepared to provide the court with three stipulated sets of dates for the setting of trial.

13. S-CV-0047770 PLACER CO DEPUTY SHERIFFS' ASSN v. PLACER CO

The demurrer and motion to strike are continued to Thursday, April 7, 2022 at 8:30 a.m. in Department 42.

14. S-CV-0047944 ROMER, DAVID v. STAGER, MICHAEL

Plaintiffs' OSC re Preliminary Injunction

The OSC re preliminary injunction is continued to Thursday, April 14, 2022 at 8:30 a.m. in Department 42. The temporary restraining order shall remain in effect until the next hearing date. The court file does not reflect plaintiffs have served the summons, complaint, ex parte order, or ex parte application on defendants. The matter is continued to afford plaintiffs an opportunity to demonstrate defendants have been served.

15. S-CV-0048046 MISKINNIS, NOREEN v. HART, MICHAEL

Petition for Judicial Determination of Abandonment of Mobilehome

The petition is continued to Thursday, April 21, 2022 at 8:30 a.m. in Department 42. The court file does not include a proof of service of the petition as required under Civil Code section 798.61(c). The petition is continued to afford petitioner an opportunity to file a proof of service for the petition.

16. S-CV-0048064 IRPO WHITE, VERONICA

Petition for Approval of Minor's Claim for Jacob White

The petition is continued to Thursday, May 5, 2022 at 8:30 a.m. in Department 42. The court requests that petitioner provide a current medical report of the minor's condition in light of the brain and skull injuries the minor suffered from the collision. The court also requests a further declaration from counsel to address why 25% of the gross settlement rather than 25% of net is reasonable in this instance. (see California Rules of Court, Rule 7.955.) Any supplemental declaration shall be filed and served by 12:00 p.m. on April 29, 2022.

Exhibit 19

Michael D. Youril, Bar No. 285591
myouril@lcwlegal.com
Lars T. Reed, Bar No. 318807
lreed@lcwlegal.com
LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
400 Capitol Mall, Suite 1260
Sacramento, CA 95814
Telephone: 916-584-7000
Facsimile: 916-584-7083

Attorneys for Respondent COUNTY OF PLACER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO, Petitioners, v. COUNTY OF PLACER, Respondent.	Case No. S-CV-0047770 Complaint Filed: December 21, 2021 **REQUEST FOR JUDICIAL NOTICE OF NEW AUTHORITY IN SUPPORT OF RESPONDENT'S DEMURRER** Date: April 7, 2022 Time: 8:30 am Dept.: 42 **(*Exempt from filing fees pursuant to Gov. Code, § 6103.)**

Respondent COUNTY OF PLACER ("County") respectfully asks the Court to take judicial notice, pursuant to Evidence Code section 451, of the following appellate decision recently issued by the Court of Appeal, First Appellate District: *Pacifica Firefighters Association v. City of Pacifica* (Mar. 24, 2022, A161575) ___ Cal.App.5th ___ [2022 WL 871260]. A copy of this decision is enclosed as **Exhibit F**.

The above-referenced decision is certified for publication and contains analysis relevant to the legal questions raised in the County's Demurrer to the Amended Petition for Writ of Mandate and Complaint for Declaratory Relief, which is currently set for hearing on April 7, 2022.

Specifically, the decision contains analysis relevant to (1) the legal scope of the local initiative power with regard to public employee compensation, and (2) the preemptive effect of the Meyers-Milias Brown Act over local initiatives concerning public employee compensation.

Under Evidence Code section 451, subdivision (a), the court "shall" take judicial notice of the decisional law of the state of California. Therefore, the County requests that the Court take judicial notice of the Court of Appeal's decision in *Pacifica Firefighters Association v. City of Pacifica* (Mar. 24, 2022, A161575) ___ Cal.App.5th ___ [2022 WL 871260], which is attached as Exhibit F.

Dated: March 29, 2022

LIEBERT CASSIDY WHITMORE

By: _____

Michael D. Youril
Lars T. Reed
Attorneys for Respondent
COUNTY OF PLACER

Liebert Cassidy Whitmore
A Professional Law Corporation
400 Capitol Mall, Suite 1260
Sacramento, CA 95814

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF PLACER

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: **400 Capitol Mall, Suite 1260, Sacramento, CA 95814.**

On **March 29, 2022**, I served the foregoing document(s) described as **REQUEST FOR JUDICIAL NOTICE OF NEW AUTHORITY IN SUPPORT OF RESPONDENT'S DEMURRER** in the manner checked below on all interested parties in this action addressed as follows:

David Mastagni
Taylor Davies-Mahaffey
Mastagni Holstedt, A.P.C.
1912 I Street
Sacramento, CA 95811

email: davidm@mastagni.com
tdavies-mahaffey@mastagni.com

☑ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☑ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from lsossaman@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **March 29, 2022**, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Lauren Sossaman
Lauren Sossaman

Liebert Cassidy Whitmore
A Professional Law Corporation
400 Capitol Mall, Suite 1260
Sacramento, CA 95814

Exhibit F

Filed 3/24/22

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

PACIFICA FIREFIGHTERS ASSOCIATION, Plaintiff and Appellant, v. CITY OF PACIFICA, Defendant and Respondent.	A161575 (San Mateo County Super. Ct. No. 19CIV04212)

In 1988, the voters in the City of Pacifica (City) approved Measure F, which prescribes procedures to be followed in the event of an impasse in labor disputes with the City's firefighters. Under this measure, absent other agreement, the top step salaries of fire captains in the city are to be set at an amount not less than the average for top step salaries of fire captains in five neighboring cities. After an impasse in negotiations occurred in 2019, the Pacifica Firefighters Association (PFFA) sought a writ of mandate and declaratory relief requiring the City to follow Measure F. The trial court denied the petition, finding Measure F preempted by state law and an unlawful delegation of power. We affirm.

BACKGROUND

Measure F

Measure F, an ordinance entitled "Firefighter Dispute Resolution Process Impasse Resolution Procedures: Minimum Wages and Benefits For Firefighters," was adopted by the City's voters in 1988. The stated purpose of

the ordinance is "to resolve an impasse in wage and benefit negotiations should they occur" between representatives of the City and of the recognized firefighter organization "and to thereafter adopt minimum salary and benefits for firefighters."

Pursuant to Measure F, if representatives of the City and/or the firefighters declare an impasse in negotiations over "wages, hours, benefits, and working conditions," the parties must, within five days, see the assistance of a mediator "selected by the division of Conciliation of the Department of Industrial Relations of the State of California." If no agreement has been reached after 15 days of mediation, either party may request the state conciliation service to name a panel of seven factfinders, from which one neutral factfinder is selected by the parties through an "alternate striking process"; that neutral factfinder joins one named by the City and one named by the firefighters to form a three-member factfinding board.

The "Factfinding Board" (Board) must "undertake an investigation, conduct hearings and receive evidence from City and firefighter representatives on all outstanding issues in dispute" and then make a recommendation on each disputed issue. Section 2(d) of Measure F provides: "The recommendations shall not be binding. On the issue of salaries and benefits, the recommendations of the Board shall be in conformity with the prevailing wage criteria established in Section 3 of this ordinance." After a 15-day period during which the parties must resume negotiations, the Board's findings and recommendations on any issues remaining in dispute "shall be submitted to the City Council for its consideration and implementation."

Section 2(e) of Measure F provides: "The City Council shall carefully consider all the recommendations of the Factfinding Board. It is the intention of this ordinance that the recommendations of the Factfinding Board should be adopted by the City Council unless said recommendations are not supported by the findings of the Board or the findings are not supported by the preponderance of evidence received by the Board. In the event the City Council does not adopt the recommendations of the Factfinding Board on any issue, the City Council shall then make its own written findings on such issues. Such findings must be supported by the preponderance of evidence received by the Factfinding Board. On the subject of wages and benefits, the City Council shall follow and apply the prevailing wage and benefit criteria set forth in Sections 3(a) and 3(b) of this ordinance."

Pursuant to section 3(a) of Measure F, "Unless otherwise agreed by City and firefighter representatives following the adoption of this ordinance, the top step salaries of Fire Captains in the City of Pacifica shall be fixed retroactively to July 1 of each fiscal year at an amount which is not less than the average for top step salaries for Fire Captains in the Cities of South San Francisco, Daly City, San Mateo, San Bruno and Redwood City. Salaries for top step Firefighter-Engineers shall be adjusted to a rate of 15.3% below the salary for top step Fire Captains. The percentage rated step increases below the top step Fire Captain and the top step Firefighter-Engineer shall be increased proportionately to the increases in the top steps for said classifications."

Section 3(b) of Measure F states that employer costs for medical insurance for fire captains, firefighter-engineers and their dependents, and employer costs for vacations, holidays, educational incentives, sick leave, non-safety related uniform costs and retirement benefits, "shall be totaled and

divided by the number of actual employees in the represented unit. Said costs shall then be compared to and maintained at not less than the employer costs and employer incurred costs of such benefits for Firefighters, Fire Engineers and Fire Captains actually employed in the cities identified in Section 3(a) of this ordinance. It is the intention of this ordinance that, unless otherwise agreed by City and firefighter representatives, that the City Council should follow the recommendations of the Factfinding Board in allocating the costs prescribed by this subsection unless said findings are not supported by a preponderance of the evidence received by the Board."

Meyers-Milias-Brown Act

"In general, labor relations between local government employers and employees are regulated by the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq." (*Service Employees Internat. Union v. Superior Court* (2001) 89 Cal.App.4th 1390, 1394.) "[T]he MMBA has two purposes: (1) to promote full communication between public employers and employees; (2) to improve personnel management and employer-employee relations within the various public agencies. Those purposes are to be achieved by establishing methods for resolving disputes over employment conditions and for recognizing the right of public employees to organize and be represented by employee organizations. Section 3500 states, however: 'Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee

relations. . . .' " (*Los Angeles County Civil Service Com. v. Superior Court* (1978) 23 Cal.3d 55, 62; Gov. Code, § 3500.)[1]

The MMBA requires a public employer to meet and confer in good faith with the recognized employee organization on wages, hours, and other terms and conditions of employment (§ 3505), and provides procedures to be followed if the parties fail to reach agreement. The parties may "together" agree upon the appointment of a mediator mutually agreeable to both. (§ 3505.2.) If there is no mediation, or if mediation is not successful, the employee organization may request submission of the parties' differences to a "factfinding panel" comprised of three members, one selected by each of the parties and a third selected by the Public Employment Relations Board. (§ 3505.4, subd. (a).) The factfinding panel must meet with the parties and "may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate." (§ 3505.4, subd. (c).)

The panel is required to "consider, weigh, and be guided by" eight enumerated criteria: (1) "State and federal laws that are applicable to the employer"; (2) "Local rules, regulations, or ordinances"; (3) "Stipulations of the parties"; (4) "The interests and welfare of the public and the financial ability of the public agency"; (5) "Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies" (6) "The consumer price index for goods and services, commonly known as the cost of living"; (7) "The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and

[1] Further statutory references are to the Government Code unless otherwise indicated.

other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received"; and (8) "Any other facts . . . which are normally or traditionally taken into consideration in making the findings and recommendations." (§ 3505.4, subd. (d).)

The panel must "make findings of fact and recommend terms of settlement," which must be submitted in writing to the parties and, subsequent to their receipt, made available to the public." (§ 3505.5, subd. (a).) The panel's findings and recommendations "shall be advisory only." (*Ibid.*) As relevant here, "[a]fter any applicable mediation and factfinding procedures have been exhausted," the public employer "may, after holding a public hearing regarding the impasse, implement its last, best, and final offer." (§ 3505.7.)

This Case

According to the parties' stipulated facts, the City (as of January 2020) employed six fire captains and 12 firefighters, including three vacant firefighter positions expected to be filled beginning January 27, 2020. In October 2018, the parties began negotiations for a new contract to replace the "Memorandum of Understanding" that was to expire at the end of that year. The City initially offered a two percent salary increase per year for three years, for all PFFA bargaining unit members. On February 15, 2019, the City increased its offer to a four percent salary increase in the first year (adding a two percent " 'market equity adjustment' " to the originally offered two percent salary increase in the first year), followed by two percent increases in the second and third years. On March 6, 2019, PFFA declared an impasse and its intent to invoke Measure F procedures if an agreement could not be reached in mediation. The City "stated that it would follow the

Measure F procedures only to the point where they diverged from the requirements of the [MMBA]." Mediation was unsuccessful and, on April 24, 2019, PFFA stated "it would like to proceed to factfinding pursuant to Measure F and, absent a change in the City's position, PFFA would file a Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief."

The procedures and standards in Measure F have never previously been applied to set firefighters' compensation in Pacifica. As of May 2019, "[w]ithout adjustments for health care benefits and other elements of total compensation, the top step salaries for Fire Captains and Firefighters in the City of Pacifica . . . were "approximately 18.15% and 21.8% less respectively than the average for top step salaries for Fire Captains and Firefighters in the cities of South San Francisco, Daly City, San Mateo, San Bruno, and Redwood City." If firefighter salaries in Pacifica had been set pursuant to Measure F in fiscal year 2019, without adjustments for health care payments, the city council would have had to increase salaries for top step fire captains by approximately 18.15 percent and top step firefighters by 21.8 percent.

PFFA filed its amended verified first amended petition for writ of mandate (Code Civ. Proc., § 1085) and complaint for declaratory and injunctive relief (Code Civ. Proc., § 1060) on September 4, 2019, seeking "to enforce the plain language of Measure F as the parties' legally binding and non-discretionary vehicle for factfinding and resolving the current impasse in wage and benefit negotiations." The City answered and, after receiving briefs from the parties, the trial court issued a tentative ruling denying the petition. The court concluded Measure F is preempted by the MMBA and constitutes an unlawful delegation of power. As to the former, the court found two provisions of Measure F conflict with the MMBA. First, the mandate of

section 3 of Measure F that, absent agreement otherwise, salaries must be fixed at an amount not less than the average in the other jurisdictions, conflicts with the MMBA's authorization for public agencies to unilaterally impose their last, best, and final offer if negotiations fail. Second, Measure F's requirement that the factfinding board's recommendation be in conformity with the prevailing wage criteria in section 3 of the ordinance conflicts with the MMBA's requirement that the factfinding board weigh specified factors, including the interests and welfare of the public and financial ability of the public agency when developing any recommendation. (§ 3505.4, subd. (d)(4).) The court found Measure F "constitutes an unlawful delegation of power by the electorate" because, since Pacifica is a general law city, the city council has exclusive authority to fix compensation for appointive officers and employees (§ 36506) and a local initiative usurping this authority is unenforceable. After a hearing on September 10, 2020, the court adopted its tentative ruling as the order of the court. Its order denying the petition was filed on October 9, 2020.

This appeal followed.

DISCUSSION

"A traditional mandamus is sought to enforce a nondiscretionary duty to act on the part of a court, an administrative agency, or officers of a corporate or administrative agency." (*Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 618.) "There are two requirements essential to issuance of a writ of mandate under Code of Civil Procedure section 1085: (1) the respondent has a clear, present, and usually ministerial duty to act; and (2) the petitioner has a clear, present, and beneficial right to performance of that duty." (*Ibid.*)

"Where, as here, the pertinent facts are undisputed and the issue of the City's mandatory duty under the ordinance presents an issue of statutory interpretation, 'the question is one of law and we engage in a de novo review of the trial court's determination.' (*Marshall v. Pasadena Unified School Dist.* [(2004)] 119 Cal.App.4th 1241, 1253; see also *Shamsian v. Department of Conservation* [(2006)] 136 Cal.App.4th 621, 631.) ' " 'As the matter is a question of law, we are not bound by evidence on the question presented below or by the lower court's interpretation. [Citations.]' [Citation.]" [Citations.]' (*Cummings v. Stanley* [(2009)] 177 Cal.App.4th 493, 508.)" (*Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.)

I.

PFFA contends the present case is controlled by *Kugler v. Yocum* (1968) 69 Cal.2d 371 (*Kugler*), which held that a proposed ordinance requiring salaries of firefighters in the City of Alhambra to be set at no less than the average of the salaries received by firefighters in the neighboring City of Los Angeles and County of Los Angeles did not unlawfully delegate the Alhambra City Council's legislative power to the parties who establish salaries for firefighters in the neighboring jurisdictions. (*Id.* at pp. 373–374.)

Kugler began its discussion with the observation that "the subject matter of the proposed ordinance, that is the salaries of city firemen, falls within the electorate's initiative power. The city charter provides that the 'Council . . . shall have the power to . . . establish . . . the amount of [the fire division's] . . . salaries' (§ 81) and that the 'electors . . . shall have the right to . . . adopt . . . any ordinance which the council might enact' (§ 176). Since in dealing with wage rates, the city council acts in its 'legislative' rather than its 'administrative' capacity [citations], wage rates are a proper subject for adoption as an ordinance by a city council and, accordingly, pursuant to

section 176, for enactment by an initiative." (*Kugler, supra,* 69 Cal.2d at p. 374.)

Kugler then explained that "the purpose of the doctrine that legislative power cannot be delegated is to assure that 'truly fundamental issues [will] be resolved by the Legislature' and that a 'grant of authority [is] . . . accompanied by safeguards adequate to prevent its abuse.' " (*Kugler, supra*, 69 Cal.2d at p. 376.) While a legislative body must itself perform these functions, it " 'may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the "power to fill up the details" by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect . . . .' " (*Ibid*.)

Applying these principles, *Kugler* concluded: "[T]he adoption of the proposed ordinance, either through promulgation by the Alhambra City Council or by initiative, will constitute the legislative body's resolution of the 'fundamental issue.' Once the legislative body has determined the issue of policy, i.e., that the Alhambra wages for firemen should be on a parity with Los Angeles, that body has resolved the 'fundamental issue'; the subsequent filling in of the facts in application and execution of the policy does not constitute legislative delegation. Thus the decision on the legislative policy has not been delegated; the implementation of the policy by reference to Los Angeles salaries is not the delegation of it." (*Kugler*, *supra*, 69 Cal.2d at p. 377.)

PFFA views the situation in the present case as directly analogous, urging that under Measure F, after firefighter salaries are determined by the Board, the City "retains full discretionary power in determining whether the data and the Board findings are sound and how, exactly, the City will execute

its own previously determined policy of achieving pay parity for the City's firefighters." There are at least two problems with this view.

First, PFFA's emphasis on the discretion Measure F leaves to the city council ignores the fact that the ordinance dictates the minimum level at which firefighters' compensation ultimately must be fixed. Measure F permits the city council to reject the factfinding board's recommendations if it finds they are not supported by the evidence, and to make its own findings based on the evidence before the board. But Measure F leaves the city council no discretion as to the standard that must be followed in fixing firefighters' compensation: Section 3 of Measure F *requires* compensation *no less than* that of firefighters in the comparison jurisdictions.

Second, PFFA attempts to elide any distinction between the electorate and the city council by referring to the City's "own previously determined policy" of setting firefighters' compensation at no less than that of firefighters in the comparison cities. Treating the voters' policy decision as in effect a policy decision by the city council, PFFA views *Kugler* as controlling because "the City"—whether voters or city council—established the fundamental standards to be applied in determining compensation. But in assuming the validity of the voter-adopted measure, PFFA's argument glosses over the fact that *Kugler* involved a charter city whose charter expressly gave the voters the right to adopt any legislation the city council could enact, while Pacifica is a general law city. Contrary to PFFA's argument, this distinction is significant.

"Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 555.) " ' "[S]alaries of local

employees of a charter city constitute municipal affairs and are not subject to general laws." ' " (*Id.* at p. 564; *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 567.)

By contrast, "[t]he powers of a general law city include ' "only those powers expressly conferred upon it by the Legislature, together with such powers as are 'necessarily incident to those expressly granted or essential to the declared object and purposes of the municipal corporation.' The powers of such a city are strictly construed, so that 'any fair, reasonable doubt concerning the exercise of a power is resolved against the corporation.' [Citation.]" [Citations.]' (*Martin v. Superior Court* (1991) 234 Cal.App.3d 1765, 1768.)" (*G.L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1092.)

" '[T]he local electorate's right to initiative and referendum is guaranteed by the California Constitution, article II, section 11, and is generally co-extensive with the legislative power of the local governing body. [Citation.] . . . "[W]e will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors . . . are subject to initiative and referendum." ' (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775, fn. omitted (hereafter *DeVita*).)" "The presumption in favor of the right of initiative is rebuttable upon a clear showing that the Legislature intended 'to delegate the exercise of . . . authority exclusively to the governing body, thereby precluding initiative and referendum. [Citation.]' (*DeVita,* . . . at p. 776.)" (*Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 833–834.)

"In ascertaining whether the Legislature intended to delegate authority exclusively to the local governing body, the 'paramount factors' are '(1) statutory language, with reference to "legislative body" or "governing body"

deserving of a weak inference that the Legislature intended to restrict the initiative and referendum power, and reference to "city council" and/or "board of supervisors" deserving of a stronger one [citation]; (2) the question whether the subject at issue was a matter of "statewide concern" or a "municipal affair," with the former indicating a greater probability of intent to bar initiative and referendum [citation].' (*DeVita, supra,* 9 Cal.4th at p. 776.)" (*Totten, supra,* 139 Cal.App.4th at p. 834.) "Any other indications of legislative intent" are also to be considered. (*DeVita,* at p. 776.) These interpretive factors are not meant to be "a set of fixed rules for mechanically construing legislative intent," and " ' " '[i]f doubts can [be] reasonably resolved in favor of the use of [the] reserve initiative power, courts will preserve it.' " ' " [Citations.]" (*Id.* at p. 777.)

As a general law city, Pacifica is subject to section 36506, which provides, "By resolution or ordinance, the *city council* shall fix the compensation of all appointive officers and employees." (§ 36506, italics added.) Although not conclusive, the statute's use of the specific term "city council" (rather than a more generic reference such as "legislative body" or "governing body") supports a "strong inference" that the Legislature meant to exclude the electorate from the authority conferred by section 36506. (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501–505; *Totten, supra,* 139 Cal.App.4th at p. 835.)

The City maintains that the California Supreme Court, in *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22 (*Bagley*), has "already held" section 36506 "bars the voters of a general law city from delegating the city council's exclusive authority to fix employee compensation." *Bagley* held invalid an initiative that would have required unresolved disputes between the city and the recognized firefighters' employee organization to be

submitted to binding arbitration. The court explained that "[w]hen the Legislature has made clear its intent that one public body or official is to exercise a specified discretionary power, the power is in the nature of a public trust and may not be exercised by others in the absence of statutory authorization. [Citations]. [¶] Although standards might be established governing the fixing of compensation and the city council might delegate functions relating to the application of those standards, the ultimate act of applying the standards and of fixing compensation is legislative in character, invoking the discretion of the council." (*Bagley*, at pp. 24–25.) The court further noted that provisions of the MMBA, which indicated "ultimate determinations" regarding resolution of disputes between public employers and public employee organizations are to be made by the governing body itself," "confirm[ed]" that "the plain language" of section 36506 should be applied "literally." (*Bagley*, at p. 25.)

PFFA attempts to distinguish *Bagley* on the basis that it involved delegation of the city council's authority over employee compensation to an arbitrator, whose binding decision would fix the salaries at issue, whereas Measure F reflects a legislative policy adopted by the City's electorate, with only implementation left to others, as in *Kugler*. This distinction, as we have said, ignores the fact that *Kugler* involved an exercise of initiative power that was expressly granted by the city's charter while Pacifica is a general law city subject to section 36506. Indeed, *Bagley* specifically noted this point in distinguishing *Kugler,* stating *Kugler* "involved the sufficiency of standards necessary to a valid delegation of legislative power *in the absence of statutes demonstrating an intent that the power be exercised by a specific legislative body*. Here legislative intent limiting delegability is clear." (*Bagley, supra,* 18 Cal.3d at p. 26, italics added.) PFFA's focus on the fact that the impasse

resolution measure at issue in *Bagley* was binding arbitration begs the essential question, which is whether section 36506 delegated authority to set municipal employees' compensation exclusively to the city council so as to preclude legislation on the matter by initiative.

The strong inference of exclusive delegation arising from section 36506's specific reference to the "city council" is all the stronger when section 36506 is compared to other statutes in the same division of title 4 of the Government Code ("Government of Cities"). Section 36516 authorizes the city council to enact an ordinance providing that each city council member shall receive a salary based on the city's population, in amounts specified by the statute (§ 36516, subd. (a)(1)), but further provides that "the question of whether city council members shall receive a salary for services, and the amount of that salary, may be submitted to the electors" and determined by the electors' majority vote, including being "increased beyond" or "decreased below" the statutory amount. (§ 36516, subd. (b).) Section 36516.1 provides that an elective mayor[2] "may be provided with compensation in addition to that which he or she receives as a council member," which "additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election." The fact that other statutes regarding salaries paid by general law cities make explicit provision for issues to be submitted to the voters, while section 36506 does not, reinforces the inference that the Legislature intended

[2] Pursuant to section 36801, the city council of a general law city elects one of its members to be mayor. The city council may, however, submit to the voters the question whether the electors shall thereafter elect a mayor, and after an elective mayor's office has been established, the city council may submit to the voters the question whether to eliminate such office and reestablish the statutory procedure. (§§ 34900, 34902.)

only the city council, and not the voters, to determine the salaries of city employees.

The inference of exclusive delegation to the city council is also supported by consideration of the effect on city operations if the voters could require a minimum level of compensation for specific city employees. In attempting to divine the Legislature's intent, some courts have inferred exclusive delegation "in part on the grounds that the Legislature must have intended to prevent disruption of routine operations of government." (*DaVita, supra,* 9 Cal.4th at p. 781.) Based on fiscal year 2019 figures, and without considering health care payments, Measure F would have required the City to increase salaries for top step fire captains by approximately 18.15 percent and for top step firefighters by 21.8 percent. These increases are far greater than the two percent and four percent salary increases in the City's last offer before the impasse in negotiations with PFFA. This difference could significantly impact the City's ability to meet other financial obligations and satisfy other priorities.

As has been explained with reference to a county's responsibilities in establishing a budget, "[t]he exercise of the board's legislative power in budgetary matters 'entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. . . . [I]t is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available.' (*County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 699.) In so doing, the board must weigh 'a number of other factors besides the level of the union members' salaries.' (*California Teachers Assn. v. Ingwerson* (1996) 46 Cal.App.4th 860, 876.)" (*County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322, 343.) The process by

which it is determined how the resources are to be allocated cannot be controlled by the courts or by one particular group such as a union which has an interest in how much of those resources are allocated to its members. (*County of Butte*, at p. 698.) And, as the court put it in *County of Butte,* "[t]he chaos that would result if each agency of government were allowed to dictate to the legislative body the amount of money that should be appropriated to that agency, or its staffing and salary levels, is readily apparent." (*Id.* at p. 699.) The complex balancing necessary to a city's financial decisionmaking "involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available." (*Ibid.*)

Measure F addresses the compensation of employees in a single city department; the voters sought to ensure that if negotiations failed, firefighters in Pacifica would receive compensation commensurate with that of firefighters in neighboring cities. Laudable as their purpose may have been, the voters were considering one part of a complicated puzzle in isolation. Voters do not have access to the detailed financial information necessary to see the puzzle as a whole and weigh competing demands on a finite city treasury. In specifically directing the "city council" to "fix the compensation of all appointive officers and employees" (§ 36506), the Legislature must have intended to avoid the disruption to city operations that could result if the electorate could require a general law city to pay its firefighters higher salaries than the city council deemed appropriate by requiring salaries no less than those in another jurisdiction.

We therefore agree with the trial court that Measure F is unenforceable as a usurpation of authority the Legislature granted exclusively to the city council.[3]

II.

As PFFA emphasizes, there is language in the MMBA indicating the legislation is not intended to preempt all local legislation: Section 3500 states: "Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies that provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other

---

[3] PFFA suggests that if the City "had a problem" with Measure F when it was adopted in 1988, it should have challenged the ordinance then. Its purpose in making this point is not entirely clear, as it does not go so far as to argue the present challenge cannot be maintained. The authority PFFA cites is a footnote in *Kugler* it describes as explaining that if a city dislikes a voter-approved ordinance, the remedy lies in a frontal attack on the ordinance or a formal action to narrow the electorate's initiative power. (*Kugler, supra,* 89 Cal.2d at p. 375, fn. 2.) In fact, the court's remarks addressed challenges to rules established by the city's charter, not to the proposed ordinance pertaining to initiatives and their repeal. Responding to an argument that the proposed ordinance was invalid because the city council would never be able to repeal an ordinance approved by the voters, the court stated that if the rule prohibiting the city council from undoing an initiative-enacted ordinance was deemed unwise, the remedy would be either to change that rule or to amend the charter to narrow the electorate's initiative power. (*Ibid.*) In any event, the cited footnote says nothing about any limitation on when an initiative-enacted ordinance may be challenged as an unlawful delegation of legislative power.

methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed."

The parties agree, however, that " '[t]he MMBA deals with a matter of statewide concern, and its standards may not be undercut by contradictory rules or procedures that would frustrate its purposes. [Citations.] Local regulation is permitted only if "consistent with the purposes of the MMBA." [Citation.]' " (*County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 925, quoting *International Federation of Prof. & Technical Engineers v. City and County of San Francisco* (2000) 79 Cal.App.4th 1300, 1306; *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 781 ["It is indisputable that the procedures set forth in the MMBA are a matter of statewide concern, and are preemptive of contradictory local labor-management procedures"].)"[4]

PFFA contends "[t]here is nothing in Measure F that would undercut or frustrate the purposes of the MMBA." The City, by contrast, maintains Measure F "irreconcilably conflicts with the MMBA in at least two ways." The first is Measure F's requirement that the city council set firefighters' top

[4] "The MMBA was not intended to occupy the field and preempt local regulation. 'Nothing contained herein shall be deemed to supersede the . . . rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations' (§ 3500). Looking to the future, the MMBA authorizes public agencies to adopt 'reasonable rules and regulations' on specified subjects after meeting and conferring with employee organizations. (§ 3507.) One of those subjects is 'additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment' (*id.*, subd. (e))." (*International Federation of Prof. & Technical Engineers v. City and County of San Francisco, supra,* 79 Cal.App.4th at p. 1305.)

step salaries at an amount "not less than the average" for top step salaries in the specified cities, and maintain benefits costs at "not less than" the employer costs of such benefits in the comparison cities. This, the City argues, eliminates the city council's "statutory authority to unilaterally impose its last, best, and final offer" if negotiations are not successful. The second conflict the City cites is that Measure F does not require the factfinding board to weigh the factors required to be considered and weighed by the factfinding panel under the MMBA, including the interests and welfare of the public and the financial ability of the public agency, instead requiring only that the board's findings comport with the "not less than" standard.

With respect to the first point, in PFFA's view, the last, best, and final offer provision of the MMBA is not the exclusive final step if an impasse cannot be reached, and Measure F simply provides an alternative final step that is consistent with the purposes of the MMBA—an "other method[] of administering employer-employee relations" within the meaning of section 3500.[5]

PFFA's argument, of course, requires adopting the view we have rejected—that Measure F is the result of a valid exercise of the initiative power and, therefore, tantamount to a decision by the city council that the

[5] As PFFA puts it, while public entities "are invariably loathe to give up or compromise on their presumably sacrosanct right to impose a 'last, best, and final' offer when the going gets tough and impasse is reached," "that labor relations practice is not a labor relations necessity." PFFA argues that Measure F "reflects the electorate's desire that its firefighters receive pay that matches nearby comparator cities" and is "simply an 'other method' of administering employer-employee relations and overcoming impasse," an "impasse tool consistent with the MMBA's goal of improving employer-employee relations in California."

final outcome after an impasse in negotiations will be implementation of the not-less-than standard.

Had the city council itself enacted the provisions of Measure F, the question whether it conflicts with the MMBA would turn on whether last, best, and final offer provision in section 3055.7 precludes a public employer from adopting a different, binding final step in the impasse resolution process. While the MMBA does not *require* a public employer to impose its last, best, and final offer if impasse resolution procedures do not succeed, its authorization for the employer to do so serves to preserve the employer's discretion to determine the ultimate outcome (consistent with the employer's final position in negotiations). Measure F's requirement that compensation be set no lower than compensation in the comparison cities clearly conflicts with this retained control—unless it can be said that, as in *Kugler,* the enactment of Measure F constituted the necessary exercise of discretion. As previously discussed, *Kugler* viewed the ordinance requiring Alhambra's firefighters' compensation to be set at no less than that of Los Angeles firefighters as reflecting the city's exercise of discretion, through charter-authorized legislation by initiative, to adopt the comparison-based standard. That cannot be said here, where the standard was set for the City by an electorate that did *not* have authority to make the discretionary decision reserved for the city council.

Moreover, *Kugler* did not involve any question of conflict with the MMBA—which had not yet been enacted[6]—and its approval of the ordinance does not necessarily suggest Measure F presents no such conflict.

---

[6] The MMBA was enacted in 1968, building upon the initial recognition of public employee bargaining in the 1961 Brown Act.

When Measure F was adopted in 1988, the MMBA did not contain mandatory impasse procedures; the legislation "contemplate[d] resolution of impasse by procedures that are imposed by other laws or by mutual agreement, not by the MMBA." (*Santa Clara County Correctional Peace Officers' Assn., Inc. v. County of Santa Clara* (2014) 224 Cal.App.4th 1016, 1034; § 3505 [meet and confer process "should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent"].) Prior to the addition of the factfinding and impasse procedures now found in sections 3505.4, 3505.5, and 3505.7 by Assembly Bill No. 646 in 2011, "if a public agency and a union reached an impasse in their negotiations, the Act permitted the parties to mutually agree to engage in mediation (§ 3505.2), but did not require the parties to engage in factfinding or any other impasse procedure. [Citations.] If there was no impasse procedure applicable by local law or by the parties' agreement, the public agency could unilaterally impose its last, best, and final offer." (*San Diego Housing Com. v. Public Employment Relations Bd.* (2016) 246 Cal.App.4th 1, 9; *Santa Clara County Correctional Peace Officers' Assn., Inc.,* at p. 1034.) "With Assembly Bill [No.] 646's passage, if a public agency and a union reach an impasse in their negotiations, the union may now require the public agency to participate in one type of impasse procedure—submission of the parties' differences to a factfinding panel for advisory findings and recommendations—before the public agency may unilaterally impose its last, best, and final offer." (*San Diego Housing Com.*, at p. 9.)

In light of this history, had Measure F been enacted by the city council, it might have been valid when adopted in 1988. But, if so, the situation has now changed: Measure F precludes the city council from exercising its right

under section 3505.7 to impose its last, best, and final offer in the event of an impasse in negotiations.

The other conflict the City cites is between Measure F's requirement that the recommendations of the Board conform to the "prevailing wage criteria" established in section 3 of the ordinance and the MMBA's requirement that the factfinding panel consider and weigh a variety of enumerated factors. As PFFA does not address this issue in its briefs on appeal, we need not resolve it, although we note it again depends on PFFA's mistaken view that the voters could make this discretionary decision in place of the city council.

DISPOSITION

The judgment is affirmed.

Costs to the City of Pacifica.

_____
Kline, J.*

We concur:

_____
Richman, Acting P.J.

_____
Stewart, J.

Pacifica Firefighters Association v. City of Pacifica (A161575)

*Assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Trial Court:	San Mateo County Superior Court
Trial Judge:	Hon. George Miram
Attorneys for Appellant:	Goyette & Associates Richard P. Fisher
Attorneys for Respondent:	Burke, Williams & Sorensen Nicholas J. Muscolino Michelle Marchetta Kenyon Deepa Sharma

Exhibit 20

the antithesis of fair play and substantial justice. For all the foregoing reasons, the motion to quash is granted.

The court does not address SCS-Ohio's alternative relief based on inconvenient forum since it grants the request to quash service of the summons and complaint.

Service of the summons and complaint on defendant SCS Logistics, LLC as attested to in the proof of service filed on January 27, 2022, is quashed.

17. S-CV-0047770 PLACER CO DSA v. PLACER CO

Respondent County of Placer's Demurrer to the Amended Writ Petition

Ruling on Request for Judicial Notice

Respondent's request for judicial notice filed on February 2, 2022 and request for judicial notice filed on March 29, 2022 are granted under Evidence Code section 452.

Ruling on Demurrer

In this current challenge, respondent demurs to all three causes of action. It argues the first cause of action fails since Measure F enacted in 1976 violates Article XI, Section 1(b) of the California Constitution by depriving the Placer County Board of Supervisors of its constitutional authority to set employee compensation. Respondent goes on to challenge the second and third causes of action as derivative of the first cause of action, failing to allege additional facts to support any separate legal theory.

A demurrer is reviewed under well-established principles. A party may demur where the pleading does not state facts sufficient to constitute a cause of action, testing the sufficiency of the pleading and not the truth of the allegations or the accuracy of the described conduct. (Code of Civil Procedure section 430.10(e); *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleading are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Further, the pleading must be liberally construed with all inferences drawn in favor of the petitioner. (Code of Civil Procedure section 452; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7; *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.)

Respondent's challenge to the first cause of action does not generally rely on purported insufficiencies in the factual allegations. Rather, respondent asserts the claim for violations under Elections Code section 9125 cannot stand since the allegations rely on Measure F, which was invalid and unconstitutional. The right of the people to bring initiatives and referendums are not granted to the people, they are powers reserved by the people. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695.) The courts are zealous custodians of this right, charged with the duty to jealously guard the right of the people, which is often described as one of the most precious rights of our democratic process. (*Ibid.*) In this vein, judicial policy is to apply liberal construction to this power of the people when challenged so that the right is not improperly annulled with doubts resolved in favor of reserving the power. (*Ibid.*) The local initiative power is seen to be even broader than the power reserved under the California Constitution. (*Id*. at p. 696.)

When considering the liberal construction applied to the initiative power of the people along with the liberal construction that is afforded to a pleading at this stage, the court determines the allegations within the first cause of action are sufficient to withstand the demurrer. To reiterate, the challenge is brought at the pleading stage in an attempt to prevent substantive review of the petitioners' claims. To prevail, respondents need to show an inability of petitioners to proceed on the legal theory espoused in first cause of action, which has not been demonstrated here. The cases cited by respondent are factually distinguishable and, more importantly, address challenges brought beyond the pleading stage.

Gates v. Blakemore (2019) 39 Cal.App.5th 32, addressed a pre-initiative writ challenge so that the merits of the controversy over the proposed initiatives could be resolved with the trial court holding a hearing on the matter. *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, addressed a successful summary judgment motion where the trial court determined the initiative measure interfering with county board of supervisors' ability to plan and implement various projects was void and unenforceable. After a substantive review in *Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341, the trial judge issued a judgment that determined an initiative measure ordinance setting salaries for members of the board of supervisors was unconstitutional. *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, had a substantive hearing on the merits where the trial court determined a proposed initiative establishing compensation for the county board of supervisors was unconstitutional. Even respondent's newly cited case, *Pacifica Firefighters Association v. City of Pacifica* (2022) 2022 WL 871260, involved a substantive

review of the writ petition with the trial court determining the initiative requiring top step salaries for fire captains to be set at the average for neighboring cities was an unenforceable usurpation of authority granted to the city council. The court cannot determine at this juncture that the claim for violations of Elections Code section 9125 is unconstitutional on the face of the pleading even when the judicially noticeable documents are considered. As it stands, the allegations presented in the first cause of action raise a viable claim at the pleading stage. The demurrer is overruled as to the first cause of action.

The third cause of action alleges a claim for declaratory relief, seeking to declare the rights of the parties on an actual controversy between the parties regarding the repeal of Measure F. The allegations within this claim sufficiently plead a cause of action for declaratory relief. The relief seeks specific judicial determinations regarding the validity of the repeal of the prior version of Section 3.12.040, which is distinguishable from that sought in the first cause of action. The demurrer is also overruled as to the third cause of action.

The same is not true for the second cause of action, which alleges a violation of Placer County Code Section 3.12.040. The allegations within this claim are conclusory in nature, failing to allege facts in support of the cause of action. Furthermore, the cause of action is not viable against the current iteration of Section 3.12.040. The allegations refer to a version of Section 3.12.040 that is no longer in effect. The demurrer is sustained as to the second cause of action.

The final matter to address is whether petitioners should be afforded leave to amend. The court has carefully reviewed the allegations within the amended writ petition along with considering petitioners' opposition to the demurrer. It appears petitioners may be able to remedy the deficiencies in the second cause of action so as to formulate a valid legal claim. The demurrer is sustained with leave to amend since there appears to be an ability to remedy the deficiencies in the second cause of action.

The second amended writ petition shall be filed and served by April 29, 2022.

Respondent County of Placer's Motion to Strike the Amended Writ Petition

Ruling on Request for Judicial Notice

Respondent's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

Respondent seeks to strike paragraphs 10-63 of the amended writ petition, asserting none of the allegations are relevant to the causes of action alleged in the pleading. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (Code of Civil Procedure section 437(a).) Further, the parties are to meet and confer regarding any objections to language prior to the filing of a motion to strike. (Code of Civil Procedure section 435.5.)

Initially, the court does not accept respondent's characterization of meet and confer attempts. Respondent takes the position that it had nothing further to discuss after the filing of the amended writ petition since the parties had essentially said all they had to say prior to the filing of the motion to strike. Section 435.5 contemplates a more vociferous attempt to resolve matters. The statute calls for the parties to attempt resolution of objections raised in the motion to strike. Respondent tacitly admits it did not engage in this robust level of informal resolution. The court will expect the parties to adopt a more broadminded interpretation of the informal meet and confer process in the future rather than incorporating prior discussions as a fulfillment of their meet and confer obligations.

The court has carefully reviewed the challenged allegations and determines the allegations in paragraphs 22, 23, 46, 49, and 50 are irrelevant and improperly pleaded. The motion is granted as to these paragraphs. The court strikes paragraphs 22, 23, 46, 49, and 50 without leave to amend.

The remainder of the paragraphs are sufficiently relevant to the claims alleged in this action so as to stand as pleaded. The motion is denied as to the remainder of the challenged paragraphs.

18. S-CV-0047802 OREGEL, GARBRIEL v. SIERRA PACIFIC INDUSTRIES

The motion to compel arbitration is dropped from the calendar. A stipulation and order for dismissal of the action was entered on April 1, 2022.

Exhibit 21

Transcript of Proceedings

April 07, 2022

Placer County Deputy Sheriff's Assoc.

vs.

County of Placer

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO,

Petitioners,

vs. Case No. S-CV-0047770

COUNTY OF PLACER,

Respondent.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

REPORTER'S TRANSCRIPT OF REMOTE HEARING PROCEEDINGS

April 7, 2022

9:16 a.m.

REPORTED REMOTELY FROM SOLANO COUNTY, CALIFORNIA

BY: ALESIA L. COLLINS, CSR 7751, CLR

JOB NO. 10097937
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO,

Petitioners,

vs. Case No. S-CV-0047770

COUNTY OF PLACER,

Respondent.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Reporter's Transcript of Remote Hearing, beginning at 9:16 a.m., and adjourning at 9:40 a.m., on Thursday, April 7, 2022, before Alesia L. Collins, CSR, CLR, appearing remotely.
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

THE HONORABLE MICHAEL W. JONES, Judge Presiding
PLACER COUNTY SUPERIOR COURT, Department 42
10820 Justice Center Drive
Roseville, CA 95678

Appearances of Counsel:

For the Petitioners:

MASTAGNI HOLSTEDT, A.P.C.
By: DAVID MASTAGNI, Esq.
TAYLOR DAVIES-MAHAFFEY, Esq.
1912 I Street
Sacramento, CA 95811
916 446-4692
davidm@mastagni.com
tdavies-mahaffey@mastagni.com

For the Respondent:

LIEBERT CASSIDY WHITMORE
By: MICHAEL D. YOURIL, Esq. (Via Zoom)
LARS T. REED, Esq.
400 Capitol Mall, Suite 1260
Sacramento, CA 95814
916 584-7000
myouril@lcwlegal.com
lreed@lcwlegal.com

Also Present:

Kate Sampson, Placer County
Brett Holt, Placer County

REPORTER'S TRANSCRIPT OF REMOTE HEARING PROCEEDINGS

Thursday; April 7, 2022; 9:16 a.m.

THE COURT: Next matter I have is the Placer County Deputy Sheriff's Association versus County of Placer. And, for this matter I have some folks online.

Let's see. Ms. Collins, are you ready on this?

COURT REPORTER: Yes, sir. I'm ready.

THE COURT: Okay. Thank you.

And I have Michael, is it pronounced Youril, online.

MR. YOURIL: Yes, Your Honor, but Lars Reed is in person and will be arguing.

THE COURT: I'm sorry. Say that again.

MR. YOURIL: Yes, Your Honor, but my colleague, Lars Reed, is in court and will argue in person.

THE COURT: Oh, okay. Yes. Thank you.

And, then I have folks who are here in court, so we'll get their appearance too.

Yes, sir.

MR. REED: Lars Reed, for the County of Placer. With me is Kate Sampson, the HR director, and Brett Holt, from the County Counsel's office.

THE COURT: All right. Good morning.

MS. DAVIES-MAHAFFEY: Good morning, Your Honor.

Taylor Davies-Mahaffey, spelled D-A-V-I-E-S, hyphen, M-A-H-A-F-F-E-Y, on behalf of Placer County Deputy Sheriff's Association.

THE COURT: Good morning.

MR. MASTAGNI: Good morning, Your Honor. David Mastagni, on behalf of Placer County Deputy Sheriff's Association.

THE COURT: Good morning to each of you. Make yourself comfortable, folks.

All right. Mr. Reed, I'm told that you're going to present the argument -- oral argument on the Court's tentative ruling. I have one for the demurrer and one for the motion to strike. What's the plan here this morning?

MR. REED: That's right, Your Honor. The County is essentially asking the Court to reconsider its tentative ruling, essentially because we believe it is incomplete.

The petition in this case seeks to invalidate the County's amendment of County Code Section 3.12.40, asserting that the County's actions repealed the ballot initiative without voter approval.

The County demurs that the ballot initiative, called Measure F, was already legally void for three separate reasons, which would mean that Section 3.12.40

of the County Code was a normal ordinance, subject to regular amendment and repeal.

Three reasons we set forth for why Measure F was legally void is that it was preempted by the Meyers-Milias-Brown Act, that it's inconsistent with the 1980 County Charter, and therefore implicitly repealed by the County Charter in 1980. And, that it was an unlawful infringement on the Board of Supervisors' constitutional authority to set compensation for county employees.

The tentative ruling only even acknowledges one of those three arguments. Essentially the tentative ruling appears to have taken the three pitches that we set out -- let -- said that it was based on one, and then said three strikes. It never even addresses the argument or acknowledges it, the argument that Measure F was preempted by the Meyers-Milias-Brown Act or that it was inconsistent with the County Charter.

Even where the tentative ruling does address the argument, it only goes so far as to say that the challenge -- the cases cited in the demurrer do not -- that those cases address challenges brought beyond the pleading stage.

But, that is not the legal standard for determining whether a demurrer is appropriate. Under

the Code of Civil Procedure, a demurrer is appropriate any time the face of the petition clearly discloses a defense, or a defense is apparent for matters subject to judicial notice.

All three of the grounds for demurrer fall directly from the face of the petition, as well as matters subject to judicial notice. The petition says that Measure F imposes a non-discretionary duty for the County to fix deputy sheriff wages by a specific formula.

The Court has already taken judicial notice of the complete text of the ballot initiative, as well as the complete text of the 1980 County Charter. There is no requirement under the law that there be an evidentiary or other formal hearing on questions of statutory interpretation or similar fewer questions of law.

Now after briefing, the Court of Appeals issued a decision in the "Pacifica Firefighters Association" case. In that case the Court of Appeal invalidated a very similar ballot initiative from 1988 that would fix municipal firefighter salaries, unless otherwise agreed. Notably, that is less restrictive than Measure F in Placer County.

The County believes that the firefighters --

the "Pacifica Firefighters" case is entirely dispositive of the MMBA question and should be binding on the Superior Court.

It also raises an additional legal issue that was not already briefed of whether Measure F conflicts with, and is preempted by state general law. In the "Pacifica Firefighters" case, which was a city, that would have been Government Code Section 36506. The equivalent statute for county, Section 25300, is extremely similar.

The County would also note that the tentative is inconsistent. The ruling on the second cause of action concludes that Section 3.12.40 was amended. That conclusion should have been dispositive of the other causes of action as well.

So, the County requests that the Court withdraw its tentative ruling and reconsider the decision on the merits.

As for the motion to strike, the tentative ruling mischaracterizes the County's position with respect to the meet-and-confer efforts. The County and Petitioner's counsel discussed the proposed motion to strike for well over an hour in response to the original petition, and although we acknowledge there was an amended petition, every one of the challenged paragraphs

is the same in both petitions, so we believe that meet-and-confer efforts were more than sufficient.

And, in any event, Code of Civil Protection -- Code of Civil Procedure, Section 435.5, specifically says there's -- an incon -- insufficient meet-and-confer is not valid grounds to deny a motion to strike.

More to the point, the substantive merits of this case depend entirely on a very small set of undisputed facts. Measure F was enacted, and the Court has taken judicial notice of its text.

The same salary formula was later codified at County Code Section 3.12.40. The County Charter was enacted in 1980. The Court has already taken judicial notice of its text. The County amended Section 3.12.40 in September of last year, and the Board of Supervisors voted to impose a wage increase higher than the formula would allow.

All of these are undisputed facts, and those facts are all that are needed to determine whether the County did, in fact, have the legal authority to amend Section 3.12.40, and whether the County had the legal authority to impose wage increases.

All other allegations in the petition are entirely irrelevant, and will serve only to confuse the factual record, and would vastly expand the scope of

discovery.

For example, the County is baffled as to how allegations regarding failed ballot measures in 2002 and 2006 could in any way be relevant to whether the County had the legal authority to amend Section 3.12.40, or how is a 2003 newspaper op-ad relevant to whether the County has that legal authority?

How is the fact-finder, Catherine Harris,' non-binding impasse recommendations relevant to whether the County had legal authority to amend Section 3.12.40? Under the MMBA, those are explicitly non-binding. They are due no deference from this court.

On those grounds, the County would ask that the Court reconsider both the tentative ruling on the demurrer and the tentative ruling on the motion to strike.

Thank you.

THE COURT: Who's going to argue over there?

MS. DAVIES-MAHAFFEY: I will, Your Honor.

THE COURT: You may.

MS. DAVIES-MAHAFFEY: We disagree with the County's characterization of the tentative ruling. We think the tentative ruling on the demurrer properly addressed all of the County's arguments and correctly found that there are factual and legal distinctions

between all of the cases cited by the County and the case here, and that those issues are properly decided later, after more facts can be developed on the merits, rather than just at the pleading stage.

You know, specifically dealing with the "Pacifica" case. That, as Counsel points out, dealt with a general law city. Here we are talking about a charter county.

There are a number of distinctions between the Government Code sections that deal with that. And, the language in "Pacifica" specifically, you know, relies on the fact that there the Government Code section stated the words "City Council" rather than "governing body," and makes an issue of that. And so, I think those little nuances are exactly why we need to be able to fully litigate the merits of this case.

As the Court noted, that is particularly important when we're dealing with the People's initiative power, which the courts zealously guard, as the cases say.

On the preemption issue, similarly I think there are factual distinctions between "Pacifica" and our case here. The statute in "Pacifica," the ordinance in "Pacifica" dealt with -- it was a very specific, unique ordinance that was tied up in the fact-finding

process and determined what happened after fact-finding occurred. That's not what we're dealing with here.

On the motion to strike, I -- I don't feel that we need to address the issues over the meet-and-confer. That was fully briefed and our position was laid out, and the Court's ruling did not rely on that.

And, as far as the other issues that Counsel raises, the pleading standard is not that we must only plead the bare minimum. We can plead anything that is relevant to our case. And, I think, you know, that the argument that we're having over the demurrer demonstrates that a lot of these facts about the 2002 and 2006 votes, and the County's representations and the County's interpretation and understanding of Measure F leading up to today are relevant.

MR. REED: May I respond?

THE COURT: Let me make sure she's finished.

MS. DAVIES-MAHAFFEY: I'm finished.

THE COURT: Thank you.

Yes, sir.

MR. REED: So, Petitioner's raised the issue regarding the "Pacifica Firefighters" case that that was a general law city. Placer County is indeed now a charter county. In 1976, when Measure F was enacted, Placer County was a general law county.

The general law applicable to counties, as I mentioned, Section 36506 of the Government Code for cities and Section 25300 for counties, those are extremely similar statutes.

As to the point that the "Pacifica Firefighters" case noted that the -- the Government Code section for cities specifically talks about delegating authority to the City Council, so does the Government Code section relating to the counties. It explicitly delegates authority over employee compensation to the Board of Supervisors.

The constitution only says "governing body," that's because the constitution never uses the term "Board of Supervisors," it only ever speaks of the "governing body" of a county, but specifically defines the "governing body" as a body of at least five members that are elected, meaning the Board of Supervisors.

And, even noting that that is a difference in what the statute says, statutory interpretation is not a question of fact. Statutory interpretation is a question of law, and is appropriate at the demurrer stage.

Similarly, the differences between the ordinance in the City of Pacifica and the ordinance in Placer County, those are questions of statutory

interpretation.

Yes, the ordinance in "Pacifica" only applies to the limited instance where the parties went through impasse and never reached an agreement. In Placer County, Measure F is significantly more restricted.

According to Petitioners themselves, it is binding at all times, whether or not the parties agree otherwise, whether or not they go through fact-finding. And indeed, in this case the parties did go through fact-finding, did come to an impasse, and never reached an agreement.

Even if the Placer County ordinance had said the same as the City of Pacifica ordinance, it would have still been invoked. But, ultimately all of these are questions of law, not questions of fact, and they are absolutely appropriate at the demurrer stage.

As to the MMBA, the MMBA never talked about Placer County versus general law counties. It doesn't make a distinction between cities and counties at all. It talks about public agency employers.

The "City of Pacifica Firefighters" case held that, that less restricted initiative was preempted by the MMBA because it interfered with the employer's ability to impose its last, best and final offer after going through the impasse process.

Placer County did impose its last, best and final offer after going through the impasse process, and Petitioners brought their writ petition to invalidate exactly that action.

So, to the extent that the "City of Pacifica Firefighters" case is binding -- which it should be because it is a published case of the Court of Appeals -- it is entirely dispositive of the MMBA preemption issue, and this court should reach the same conclusion that the more restricted Placer County Measure F is similarly preempted by the MMBA.

Now, we acknowledge that this case was decided after the parties completed their briefing, so if it would be helpful to the Court, we are absolutely willing to submit detailed supplemental briefing on how the City of Pacifica case affects this case. If the Court does not wish us to do so, then we ask that the Court withdraw its tentative ruling and sustain the demurrer.

As for the motion to strike, I think we have said everything we need to say on that.

MS. DAVIES-MAHAFFEY: May I respond, Your Honor?

THE COURT: I will let you, it's an important issue, but then I'm just going to let Mr. Reed respond again because he gets the last word on this. He called

in.

Go ahead.

MS. DAVIES-MAHAFFEY: Okay. I just want to point out that Mr. Reed's interpretation of the "Pacifica" case would essentially invalidate a whole slew of Supreme Court case law, which has held that just because something is within the scope of representation under the MMBA that does not preempt -- that does not preempt the People's initiative power. It would invalidate cases like "Seal Beach" and "Boling."

I think that what "Pacifica" stands for is a more narrow -- it's on a more narrow set of facts where there was a statute that essentially required the city to impose -- partially impose their last, best and final. And they said that, that was -- that conflicted with the MMBA.

To say that anything that does not allow the County to impose whatever their last, best and final is, is preempted by the MMBA would be -- I think that misstates what the ruling in that case is. And, here we're not dealing with that similar type of statute.

And, again, I'll just say that these are, you know, very nuanced factual distinctions between the ordinances that we're dealing with, and that we should be able to develop the merits, and it should not be

submitted at the pleading stage.

The parties fulfilled their MMBA obligations when they met and conferred prior to placing the initiative on the ballot, and that's all that the previous Supreme Court case law has required. And so, I'll -- I'll submit on that.

THE COURT: Thank you. Mr. Reed?

MR. REED: There are two issues there. For one, the "Seal Beach" and "Boling" cases deal with an entirely separate issue. Those cases deal with when a public employer can or cannot submit its own ballot initiative that affects a matter within the scope of representation.

They hold that, you know, a city or a county cannot circumvent the union, put something on the ballot that affects compensation or other terms of employment without meeting and conferring.

That's not what we're dealing with here. What we're dealing with here is the opposite, whether an initiative brought by the public can preclude the parties from negotiating, and preclude the party -- preclude the employer from imposing its last, best and final offer, and whether it's therefore preempted by the MMBA.

The County is not arguing for an expansion of

the "Pacifica Firefighters" case. We're asking that it be applied as written.

The "Pacifica Firefighters" case specifically addressed the issue of whether an initiative can preclude the employer from imposing its last, best and final offer. The Court concluded that it cannot. That the public is simply not privy to all of the information, budgetary information that the employer has that justified a specific course of action with regard to employee conduct.

The Court specifically held that Measure F in that case -- they were named the same thing -- that that Measure F precluded the City Council from exercising its right under Government Code Section 3505.7 to impose its last, best and final offer in the event of an impasse in negotiations.

That is exactly what this case is about. The County imposed its last, best and final offer. This petition was brought arguing that Measure F precludes them from doing so. They're essentially the same case, and they should reach the same results.

Thank you.

THE COURT: All right. Thank you, folks. I'll take the matter under submission and consider your arguments here.

Thank you very much.

(Hearing adjourned at 9:40 a.m.)

State of California) ss:
County of Solano)

I, Alesia L. Collins, CSR No. 7751, CLR, do hereby certify:

That the foregoing remote proceedings were taken before me, at the time and place therein set forth, that the PROCEEDINGS were recorded stenographically by me, and were thereafter transcribed under my direction and supervision, and that the foregoing pages contain a full, true and accurate record of all proceedings and testimony to the best of my skill and ability.

IN WITNESS WHEREOF, I have subscribed my name this 20th day of April, 2022.

ALESIA L. COLLINS, CSR No. 7751, CLR

Exhibit 22

8:35 AM
no recording announced.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER

Date: April 7, 2022
Judge: Michael W. Jones
Reporter: ~~none~~ # 7751
Alesia Collins
#415.300.0469

Time: 8:25 AM
Dept.: Department 42
Clerk: Kim Harding

Placer County Deputy Sheriffs' Assoc. vs. County of Placer

(1) Mrs Davis-Mahffey counsel for π ☑ Present

(2) David Mastagni ☑ Present counsel for π

☐ And related Cross Action(s)

Case # S-CV-0047770

Law and Motion Minutes

(3) Michael Yourel via phone, counsel for Placer Co. Δ w/ HR/1 Co Rep.

Proceedings RE: Demurrer - / Motion: Strike

☐ Dropped. ☐ Continued to _____ ☐ by Plaintiff ☐ by Defendant

☐ by Stipulation ☐ by Court

(4) Lars Reed Placer Co. Δ present in courtroom

☒ Matter argued and submitted.

☐ Submitted on points and authorities without ☐ argument ☐ appearance.

☐ Motion/Petition granted. ☐ Motion/Petition denied.

☐ Demurrer ☐ sustained ☐ overruled ☐ without ☐ with leave to ☐ amend ☐ answer.

☐ Counsel appointed for:

☒ Taken under submission.

☐ Debtor is sworn and retired with counsel for examination.

☐ Stipulation to ☐ Judge Pro Tem ☐ Commissioner executed in open court.

☐ Counsel for _____ to prepare the written order and submit it to opposing counsel for approval as to content and form.

☐ Other _____.

☐ The tentative ruling is adopted as the ruling of the court, to wit:

Respondent County of Placer's Demurrer to the Amended Writ Petition

p 8 of 61

Ruling on Request for Judicial Notice

Respondent's request for judicial notice filed on February 2, 2022 and request for judicial notice filed on March 29, 2022 are granted under Evidence Code section 452.

Exhibit 23

SUPERIOR COURT OF CALIFORNIA

COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION, Petitioner, vs. COUNTY OF PLACER, Respondent.	Case No.: SCV-47770 RULING ON RESPONDENT'S (1) DEMURRER TO THE AMENDED WRIT PETITION AND (2) MOTION TO STRIKE THE AMENDED WRIT PETITION

The hearing on respondent's demurrer to the amended writ petition and motion to strike the amended writ petition came regularly before the court on April 7, 2022 at 8:30 a.m. in Department 42. The appearances of the parties for the hearing were as recited in the court's minutes. The court has carefully read and considered the briefing along with the oral arguments of the parties. The court issues the following ruling on the matters submitted for decision:

Respondent County of Placer's Demurrer to the Amended Writ Petition

Ruling on Request for Judicial Notice

Respondent's request for judicial notice filed on February 2, 2022 and request for judicial notice filed on March 29, 2022 are granted under Evidence Code section 452.

Ruling on Demurrer

In this current challenge, respondent demurs to all three causes of action. It argues the first cause of action fails since Measure F enacted in 1976 violates Article XI, Section 1(b) of the California Constitution by depriving the Placer County Board of Supervisors of its constitutional authority to set employee compensation. Respondent goes on to challenge the second and third causes of action as derivative of the first cause of action, failing to allege additional facts to support any separate legal theory.

A demurrer is reviewed under well-established principles. A party may demur where the pleading does not state facts sufficient to constitute a cause of action, testing the sufficiency of the pleading and not the truth of the allegations or the accuracy of the described conduct. (Code of Civil Procedure section 430.10(e); *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleading are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Further, the pleading must be liberally construed with all inferences drawn in favor of the petitioner. (Code of Civil Procedure section 452; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7; *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.)

Respondent's challenge to the first cause of action does not generally rely on purported insufficiencies in the factual allegations. Rather, respondent asserts the claim for violations under Elections Code section 9125 cannot stand since the allegations rely on Measure F, which was invalid and unconstitutional. The right of the people to bring initiatives and referendums are not granted to the people, they are powers reserved by the people. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695.) The courts are zealous custodians of this right, charged with the duty to jealously guard the right of the people, which is often described as one of the most precious rights of our democratic process. (*Ibid.*) In this vein, judicial policy is to apply liberal construction to this power of the people when challenged so that the right is not improperly annulled with doubts resolved in favor of reserving the power. (*Ibid.*) The local initiative power is seen to be even broader than the power reserved under the California Constitution. (*Id.* at p.

696.)

When considering the liberal construction applied to the initiative power of the people along with the liberal construction that is afforded to a pleading at this stage, the court determines the allegations within the first cause of action are sufficient to withstand the demurrer. To reiterate, the challenge is brought at the pleading stage in an attempt to prevent substantive review of the petitioners' claims. To prevail, respondents need to show an inability of petitioners to proceed on the legal theory espoused in first cause of action, which has not been demonstrated here. The cases cited by respondent are factually distinguishable and, more importantly, address challenges brought beyond the pleading stage.

Gates v. Blakemore (2019) 39 Cal.App.5th 32, addressed a pre-initiative writ challenge so that the merits of the controversy over the proposed initiatives could be resolved with the trial court holding a hearing on the matter. *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, addressed a successful summary judgment motion where the trial court determined the initiative measure interfering with county board of supervisors' ability to plan and implement various projects was void and unenforceable. After a substantive review in *Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341, the trial judge issued a judgment that determined an initiative measure ordinance setting salaries for members of the board of supervisors was unconstitutional. *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, had a substantive hearing on the merits where the trial court determined a proposed initiative establishing compensation for the county board of supervisors was unconstitutional. Even respondent's newly cited case, *Pacifica Firefighters Association v. City of Pacifica* (2022) 2022 WL 871260 (*Pacifica*), involved a substantive review of the writ petition with the trial court determining the initiative requiring top step salaries for fire captains to be set at the average for neighboring cities was an unenforceable usurpation of authority granted to the city council. The court cannot determine at this juncture that the claim for violations of Elections Code section 9125 is unconstitutional on the face of the pleading even when the judicially noticeable documents are considered. As it stands, the allegations presented in the first cause of action raise a viable claim at the pleading stage.

Respondent was vehement during oral argument that this action cannot proceed past the pleading stage based solely upon *Pacifica*. This interpretation of *Pacifica*, however, is not well taken. To reiterate, the court in *Pacifica* reached a substantive determination on the enforceability of the initiative after considering the briefing and oral arguments of the parties. The case does not stand for cessation of dueling constitutional claims at the pleading stage. At this juncture, the court considers whether the claims in the first cause of action of the writ petition are sufficiently pleaded to proceed with the litigation. The court determines the answer to this question is "yes". It makes no determination as to whether the claims will ultimately prevail once a substantive review has been conducted. The demurrer is overruled as to the first cause of action.

The third cause of action alleges a claim for declaratory relief, seeking to declare the rights of the parties on an actual controversy between the parties regarding the repeal of Measure F. The allegations within this claim sufficiently plead a cause of action for declaratory relief. The relief seeks specific judicial determinations regarding the validity of the repeal of the prior version of Section 3.12.040, which is distinguishable from that sought in the first cause of action. The demurrer is also overruled as to the third cause of action.

The same is not true for the second cause of action, which alleges a violation of Placer County Code Section 3.12.040. The allegations within this claim are conclusory in nature, failing to allege facts in support of the cause of action. Furthermore, the cause of action is not viable against the current iteration of Section 3.12.040. The allegations refer to a version of Section 3.12.040 that is no longer in effect. The demurrer is sustained as to the second cause of action.

The final matter to address is whether petitioners should be afforded leave to amend. The court has carefully reviewed the allegations within the amended writ petition along with considering petitioners' opposition to the demurrer. It appears petitioners may be able to remedy the deficiencies in the second cause of action so as to formulate a valid legal claim. The demurrer is sustained with leave to amend since there appears to be an ability to remedy the deficiencies in the second cause of action.

The second amended writ petition shall be filed and served by May 27, 2022.

Respondent County of Placer's Motion to Strike the Amended Writ Petition

Ruling on Request for Judicial Notice

Respondent's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

Respondent seeks to strike paragraphs 10-63 of the amended writ petition, asserting none of the allegations are relevant to the causes of action alleged in the pleading. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) The grounds for a motion to strike must appear on the face of the pleading or from judicially noticeable matters. (Code of Civil Procedure section 437(a).) Further, the parties are to meet and confer regarding any objections to language prior to the filing of a motion to strike. (Code of Civil Procedure section 435.5.)

Initially, the court does not accept respondent's characterization of meet and confer attempts. Respondent takes the position that it had nothing further to discuss after the filing of the amended writ petition since the parties had essentially said all they had to say prior to the filing of the motion to strike. Section 435.5 contemplates a more vociferous attempt to resolve matters. The statute calls for the parties to attempt resolution of objections raised in the motion to strike. Respondent tacitly admits it did not engage in this robust level of informal resolution. The court will expect the parties to adopt a more broadminded interpretation of the informal meet and confer process in the future rather than incorporating prior discussions as a fulfillment of their meet and confer obligations.

The court has carefully reviewed the challenged allegations and determines the allegations in paragraphs 22, 23, 46, 49, and 50 are irrelevant and improperly pleaded. The motion is granted as to these paragraphs. The court strikes paragraphs 22, 23, 46, 49, and 50 without leave to amend.

The remainder of the paragraphs are sufficiently relevant to the claims alleged in this

action so as to stand as pleaded. The motion is denied as to the remainder of the challenged paragraphs.

IT IS SO ORDERED.

Dated: May 17, 2022

THE HONORABLE MICHAEL W. JONES
Judge of the Superior Court

FILED
Superior Court of California
County of Placer
MAY 17 2022
Jake Chatters
Executive Officer & Clerk
By: K. Harding, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER
CLERK'S CERTIFICATE OF MAILING [C.C.P. §1013a(4)]

Case Number: SCV0047770
Case Name: Placer County Deputy Sheriffs' Assoc. vs. County of Placer

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this case.

I mailed copies of the document[s] indicate below: **ruling on respondent's demurrer to the amended writ petition & motion to strike the amended writ petition heard April 7, 2022.**

True copies of the documents were mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as follows:

David Mastagni, Esq. **Taylor Davies-Mahaffey, Esq.** **Mastagni Holstedt** **1912 I Street** **Sacramento, CA 95811**	**Michael Youril, Esq.** **Liebert Cassidy Whitmore** **400 Capitol Mall, Suite 1260** **Sacramento, CA 95814**

I am readily familiar with the court's business practices for collecting and processing correspondence for mailing; pursuant to those practices, these documents are delivered to:

__XX__ the US Postal Service
____ UPS ____ FedEx
____ Interoffice mail
____ Other:

On May 17, 2022 in Placer County, California.

Dated: May 17, 2022

Clerk of the Superior Court, Jake Chatters
By: _____ by Deputy Clerk K. Harding

Liebert Cassidy Whitmore
A Professional Law Corporation
400 Capitol Mall, Suite 1260
Sacramento, CA 95814

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in Sacramento, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On **June 13, 2022,** I served the foregoing document(s) described as **APPENDIX TO PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF [VOLUME 3 OF 4, PP. PA 476 - PA 640]** in the manner checked below on all interested parties in this action addressed as follows:

Mr. David Mastagni
Mastagni Holstedt, A.P.C.
1912 I Street
Sacramento, CA 95811
telephone: 9164464692

email: davidm@mastagni.com

☑ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☑ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from lsossaman@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **June 13, 2022**, at Sacramento, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Lauren Sossaman